

EVIDENCE GATHERED FOR THE
REPORT
of
THE ROYAL COMMISSION
APPOINTED TO INQUIRE INTO
THE FAILURE
of
ATLANTIC ACCEPTANCE CORPORATION
LIMITED

EXAMINATION OF JACK TRAMIEL (CONT.)

Date of interview: December 6, 1966

EXAMINATION OF MANFRED KAPP

Date of interview: December 8, 1966 -

Exhibit Number: Vol. 87

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DATE December 6, 1966.

PAGES 11791 - 11951

VOL.

87

THE ROYAL COMMISSION
ON
ATLANTIC ACCEPTANCE
CORPORATION LIMITED

DATE December 6, 1966.
PAGES 11791 - 11951

SUPREME COURT REPORTERS
145 YONGE STREET
TORONTO

V O L U M E 87

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TRAMIEL, Jack Examination by
 (Resumed) Mr. Shepherd
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KAPP, Manfred Examination by
Mr. Shepherd 11911

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Ex.	Page	
No.	No.	Description
3639.	11909	Photocopy of share certificate No. C7057 for 75,000 shares of Atlantic Acceptance with assignment attached
3640	11939	Cheque dated Februar- 17, 1961, drawn on the Royal Bank of Canada, payable to Commodore Portable Typewriter Limited, in the amount of \$24,992.50, drawn by Netherlands Overseas Corporation.
3641	11940	Impression of stamp of Commodore Portable Typewriter Company Limited.

A/FTP/1

11791

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TUESDAY, DECEMBER 6, 1966

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---On resuming at 10.12 a.m.

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JACK TRAMIEL, resumed the stand.

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EXAMINATION BY MR. SHEPHERD (Cont'd):

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Q. Mr. Tramiel, evidence was given before the Commission generally to the effect -- and I can show you the documents if you should require them -- that at the beginning of 1964 Commodore Sales Acceptance and Commodore Factors dropped its interest rate from 12 per cent to 8 1/2 per cent in respect of loans theretofore made to Commodore Business Machines (Canada) Limited and its subsidiaries, and instead loaned to Trans Commercial Acceptance; and the evidence was that Trans Commercial Acceptance thereafter loaned the same moneys which it had received from Commodore Sales Acceptance and Commodore Factors, to the Commodore Business Machine companies and to other companies such as Analogue at 12 per cent, the apparent effect of the transaction being to return a profit to Trans Commercial Acceptance which was then, or at all events during the course of that year became, owned by Associated Canadian Holdings. Are you sufficiently familiar with the transaction to be able to assist the Commission on it without our going through the documents themselves, which I would be glad to do if you

J. Tramiel

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require them?

A. I am quite familiar with it.

Q. Could you give us the explanation of why that arrangement was entered into?

A. If I understood, Mr. Shepherd, you said the interest was dropped for Commodore to 8 1/2 per cent?

Q. What I at least intended to say was Commodore Sales Acceptance and Commodore Factors had in the recent past just prior to January, 1964, been lending moneys to Commodore Business Machines and these other companies at a rate of 12 per cent?

A. Yes, sir.

Q. With effect from 1st January, 1964, as I recall the evidence, Commodore Sales Acceptance and Commodore Factors loaned to Trans Commercial Acceptance at a rate of 8 1/2 per cent, and Trans Commercial Acceptance lent the money to these borrowing companies still at 12 per cent. Does that agree with your recollection of what occurred?

A. Yes. You see, Commodore Sales Acceptance had never reduced their rate to Commodore Business Machines to 8 1/2 per cent, that is the first answer.

Q. Yes?

A. I had a number of discussions with Mr. Morgan, and I complained about the high interest rate that he was charging to Commodore Business

J. Tramiel

11793

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2 Machines (Canada) Limited and its subsidiaries.

3 Q. In making that complaint, I take
4 it you were acting on behalf of Commodore Business
5 Machines?

6 A. Yes, sir. A number of times.
7 This was before the exact date when Trans
8 Commercial was formed and Baronet was formed.

9 Q. Yes?

10 A. Mr. Morgan at one time (I am not
11 sure of the exact date) said that he would like
12 to take a closer look at the financial costs of
13 the loans, and he opened up those two finance
14 companies called Trans Commercial and Baronet
15 Associates. By this way he will have a tighter
16 control and he will see it much closer exactly
17 what the cost and how big the loans are to these
18 companies; and at the end of the year, whatever
19 the year end was for Trans Commercial or Baronet
20 Associates, he will adjust the rates according
21 to the amount of work or the amount of cost that
22 it cost them to operate those loans.

23 There was never a reduction to Commodore
24 Sales -- to Commodore Business Machines (Canada)
25 Limited at that time, but my understanding was
26 that at the year-end there will be some adjustment.

27 Q. You said that the substitution of
28 Trans Commercial Acceptance as the borrower for
29 the Commodore Business Machine companies was
30 intended to have the effect of giving greater

J. Tramiel

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2 control -- was that the expression you used?

3 A. Yes, this is the understanding that
4 Mr. Morgan gave me. What he had in the back of
5 his mind I don't know, sir.

6 Q. In what sense did it give greater
7 control to any ---

8 A. My only understanding that I can
9 guess is that Commodore Sales Acceptance had other
10 customers than Commodore Business Machines
11 (Canada) Limited.

12 Q. Yes?

13 A. And by having a company which only
14 lends money to those subsidiaries, would give him
15 a much easier way of checking on the loans or
16 seeing what is going on, than going over the
17 whole Commodore Sales Acceptance bookkeeping.
18 This is only my feeling, but what was in Mr.
19 Morgan's mind I don't know. Maybe he wanted to
20 use it for something else.

21 Q. Formerly he would simply record
22 or his servants would, on the books of Commodore
23 Sales and Commodore Factors, a number of loans to
24 different borrowers; and after this arrangement
25 was entered into, he would record the same loans
26 but in the aggregate to one borrower. That was
27 the only difference, was it not?

28 A. Mr. Shepherd, I can only see from
29 to-day, as I see it to-day, not as I have seen it
30 then, as maybe by having in the books another

J. Tramiel

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finance company and he could have rediscounted the loans, it looked better for his books.

Q. But is it not manifest to you, Mr. Tramiel, that the sole practical effect of this was to give to Trans Commercial Acceptance a 3 1/2 per cent spread on the interest rate, without any benefit to Commodore Business Machines?

A. Yes, but, Mr. Shepherd, Mr. Morgan, Commodore Sales Acceptance, had complete control over those two accounts. Commodore Business Machines has deposited the moneys that they have received from their customers directly in Commodore Factors' bank account, not to Baronet Associates, but directly to Commodore Factors.

Q. Yes?

A. And it was just like, as far as Commodore was concerned, they were still dealing with Baronet ---

Q. Associates?

A. Commodore Factors I meant.

Q. Yes?

A. By this way they knew at all times what the charges were. There was no loan made or money borrowed without the total approval from Mr. Morgan or from Mr. Woolfrey, there was no money paid out in any way; so the control was the same way as it was before.

Q. I agree with what you say, Mr.

J. Tramiel

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Tramiel, but does that not show only that Trans Commercial Acceptance was discharging no function whatsoever? You have said Commodore Sales and Commodore Factors continued to send moneys to the ultimate borrowing companies and charged 8 1/2 per cent to Trans Commercial Acceptance, which in turn charged 12 per cent to Commodore Business Machines?

A. Mr. Shepherd, the only answer I can give you is by guessing why it was done to-day, is that Mr. Morgan maybe wanted to have on his books another finance company and show it as a rediscounting business, than a direct loan business.

Q. Surely what it wanted to have on the books was a profit on the books of Trans Commercial Acceptance, isn't that correct?

A. As far as the profit was concerned, as far as it was told to me is that by the end of the Commodore year-end, Commodore would get an adjustment for its loan in case the expenses are not as high as Mr. Morgan thought. This was explained to me. Now, I didn't feel I had to get the discount immediately. As long as I get the word from Mr. Morgan that he will do that, this was sufficient for me at that time.

Q. Do you say that as president of Commodore Business Machines, you considered that although for a reason which you did not under-

J. Tramiel

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2 stand (because Mr. Morgan did not make it plain)
3 although the Atlantic companies were lending at
4 8 1/2 per cent to Trans Commercial, and although
5 Trans Commercial was lending at 12 per cent to
6 Commodore Business Machines, you considered that
7 at the end of the year Trans Commercial Acceptance
8 would repay or restore to Commodore Business
9 Machines either the whole difference in interest
10 rate or at least some part of it?

11 A. I can repeat only what I have said,
12 that an amount -- how much it would have been I
13 don't know. Like I said, maybe part of it, maybe
14 the whole amount, whatever Mr. Morgan would give
15 us as an adjustment, and if he would have felt
16 that the expenses are still too high I don't know
17 if he would give us anything.

18 Q. Then as at 1st July, 1964, you recall
19 Trans Commercial Acceptance stopped being the
20 intermediary in these loans, and Baronet Associates
21 became the borrower from Commodore Sales and
22 Commodore Factors, and continued the same practice,
23 borrowing at 8 1/2 per cent and lending at 12
24 per cent. Is that your recollection? Trans-
25 Commercial Acceptance started it; then Baronet
26 took over, as it were, from Trans Commercial
27 Acceptance?

28 A. As far as I knew, they were two
29 companies, one for the United States and one was
30 for Canada; just like Commodore Sales Acceptance

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2

and Commodore Factors; this was Baronet Associates
which worked together with Commodore Factors, and
Trans Commercial which worked together with
Commodore Sales Acceptance.

6

The exact dates I couldn't answer you
without seeing the facts.

8

Q. Do you say that you believed, as
president of Commodore Business Machines, that
Baronet would make some kind of an adjustment at
the end of the year?

12

A. No, Mr. Morgan would make some
adjustment.

14

Q. But you were the president of the
company that was paying the 12 per cent. Did you
believe some adjustment was going to be made?

17

A. At that particular time I wanted to
believe that it would be made, but I had no control
over it and I couldn't go to anybody else to get
the money anyway.

21

Q. Did you believe that there would
be an adjustment or did you not believe?

23

A. I believed that there would be an
adjustment.

25

Q. Because Mr. Morgan indicated to you
that there would be?

27

A. Yes, sir.

28

Q. Then why was no adjustment made?

29

A. For the simple reason because before

30

Commodore's year end Atlantic went broke.

J. Tramiel

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Q. I show you Exhibit 298, an audited financial statement of Trans Commercial Acceptance Limited as at 31 December, 1964. I call to your attention the statement of operations on page 2, showing interest earned by Trans Commercial Acceptance, \$118,000 (I am omitting the hundreds); interest paid, \$82,000. Have I read those figures correctly?

A. Yes, sir.

Q. If there was an arrangement whereby Trans Commercial Acceptance was to restore some part of that money to Commodore Business Machines, why is it not reflected in the financial statement?

A. Mr. Shepherd, I mentioned to you before that this adjustment was not up to me. My understanding was it will be done at Commodore's year end, and Commodore's year end was June 30th, 1965.

Q. Well, we have a year-end that I wanted to discuss with you before that, 30th June, 1964.

HIS LORDSHIP: 351, Mr. Shepherd?

MR. SHEPHERD: I was just looking for it, Mr. Commissioner. It is 356, sir.

Q. Exhibit 356 is Commodore Business Machines (Canada) statement and I direct your attention to the fact that there is no note or other observation on the statement indicating that the auditors for Commodore Business Machines thought

J. Tramiel

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that that company was entitled to recover any

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part of this interest. What is the explanation

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for that?

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A. The explanation is I would only tell

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the auditors when the cheque is going to be in the

7

company. Just because a man told me he might

8

give me in case money is going to be there, I do

9

not think I was entitled to tell the auditors

10

just that it might be.

11

Q. Trans Commercial Acceptance, Mr.

12

Tramiel, was owned at the relevant time, I put

13

it to you, by Associated Canadian Holdings, in

14

which you and Mr. Kapp and Mr. Morgan had an

15

interest?

16

A. Yes, sir.

17

Q. Did you inform the directors of

18

Commodore Business Machines that the company

19

supplying its funds was in fact lending that money

20

at 8 1/2 per cent to a company in which you and

21

Mr. Morgan (the chairman of the Board) and Mr.

22

Kapp had an interest, but that the borrowing

23

company was still charging 12 per cent to

24

Commodore Business Machines?

25

A. I do not recall telling the Board

26

directly, and I do not recall exactly when Trans

27

Commercial owned Associated Canadian Holdings,

28

when Associated Canadian Holdings bought Trans

29

Commercial, not running the company.

30

Q. I put it to you, Mr. Tramiel, that

J. Tramiel

11801

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2 there was one exception to this rule of Trans
3 Commercial Acceptance or Baronet Associates
4 getting 12 per cent and not passing on the savings
5 to the borrowing company. That exception was
6 made for A.C.E. Business Equipment Limited or
7 Incorporated, which company borrowed its money
8 at 8 1/2 per cent instead of 12 per cent. Why
9 was that company an exception?

10 A. I couldn't answer you, sir.

11 Q. You see, the problem we face is
12 that the publicly-owned companies do not get the
13 benefit of the decline in interest, but A.C.E.
14 Business Equipment does get it?

15 A. Mr. Shepherd, I would like to make
16 it clear, when you say "publicly held companies",
17 yesterday I have testified and I gave you
18 information that A.C.E. has sold its assets to
19 Commodore Business Machines without one cent of
20 profit to the public company. The way you are
21 putting it at the present time, that somebody
22 was making a profit again.

23 Q. Did A.C.E. go out of business when
24 it sold to Commodore Business Machines?

25 A. Yes, sir, I believe it did.

26 Q. That could not be the relevant
27 time, because A.C.E. Business Equipment is
28 borrowing money from Baronet and possibly from
29 Trans Commercial Acceptance. I suggest this
30 must have been at a time when A.C.E. Business

J. Tramiel

11802

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2 Equipment was in business. 31 July, 1964, is one
3 date when A.C.E. Business Machines Incorporated
4 owes money to Baronet Associates Incorporated, to
5 which it is paying 8 1/2 per cent?

6 A. Well, when you say money, how much
7 money?

8 Q. Well, I will be glad to look up
9 the schedule for you, Mr. Tramiel.

10 THE COMMISSIONER: It would not make any
11 difference in principle, whether the amount was
12 large or small?

13 A. Mr. Commissioner, the reason I am
14 asking that question to see the figure, is because
15 I know that A.C.E. did not borrow any other money
16 than to produce or to assemble adding machines in
17 Ireland, and when Commodore bought those assets
18 they have paid the exact expenses and the total
19 loan, they took over the loan ^{from} / A.C.E. There was
20 no profit made in A.C.E. in any way.

21 Q. I do not think that is really what we
22 are talking about, Mr. Tramiel, although it is
23 comforting to hear that.

24 MR. SHEPHERD: Q. Just while that exhibit
25 is being sought, Mr. Tramiel, what I am getting at
26 is that Commodore Business Machines, Commodore
27 Dry-Copy, Commodore Business Machines Incorporated,
28 continued to pay 12 per cent. A.C.E. Business
29 Equipment pays 8 1/2 per cent. Why?

30 A. I have no idea. I know that it was a
This page generously brought to you by Paul Taylor

J. Tramiel

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loan that we possibly had with Commodore Sales Acceptance or one of the companies that we were receiving 8 1/2. I am not sure, sir.

Q. We will pass on, and when the exhibit is available perhaps I can return to it. Apart from this exhibit which you wish to see, is there anything else which you can say which would assist the Commission as to why the loans are made by Commodore Sales at 8 1/2 per cent, and the money costs the Commodore Business Machines companies 12 per cent?

A. The only thing I can is that Mr. Morgan was president of Commodore Sales Acceptance. If he wants to give a reduction to Commodore Business Machines (Canada) from 12 cent to 8 1/2 per cent, definitely I did not stop him.

Q. But the whole of my questioning, Mr. Tramiel, has been directed to the fact that that is exactly what did not happen. He gave a reduction in interest rate to a company in each case the shares of which, some of the shares of which were registered in your name, and that reduction did not accrue to the benefit of Commodore Business Machines. Can you assist us any further on the matter?

A. Mr. Shepherd, the only answer I can give you is that the Commodore directors, which were also directors of Atlantic Acceptance -- the Trans Commercial, Baronet Associates, I believe,

J. Tramiel

11804

A/3

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2 were not small loans as far as I was concerned --
3 they knew exactly what was going on. I did not
4 have a personal interest in the companies, and
5 if there was any reductions it was strictly in Mr.
6 Morgan's hands and there was absolutely nothing
7 hidden from it.

8 Q. When you say you did not have a
9 personal interest in the companies, Mr. Tramiel,
10 is it correct that you are again asserting the
11 position that although the shares of Baronet
12 Associates Incorporated were upon its incorporation
13 registered in the name of yourself and Mr. Kapp,
14 and there was no trust agreement in existence
15 giving Mr. Morgan any interest therein, that it
16 is your contention that he did really own the
17 shares of Baronet Associates?

18 A. Yes, sir.

19
20 (Page 11805 follows)

J. Tramiel

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Q. Now, apart from showing you any exhibits which you wish to see, and I regret to say I have called for the wrong one, is there anything else you can assist us on in respect to that matter?

A. Only like I say again, Commodore Business Machines has repaid these loans to Baronet and Trans Commercial in December, 1964. And if I would have any interest, I say again, I would pay -- I would find a way I would not pay it.

Q. Mr. Tramiel, surely it is quite clear that these loans were shifted in December, 1964, and later, from the Commodore companies to Jay-Man, a company without assets; is that not correct?

A. I am saying there was \$2 million worth of loans repaid in December, 1964, to Baronet and to Trans Commercial, which went back to Commodore Sales Acceptance and Commodore Factors. All the loans from Commodore Business Machines were repaid. Not the Jay-Man loans, I am talking about Commodore Business Machines (Canada) Limited and its subsidiaries.

Q. Are you referring to the transaction whereby Commodore Business Machines sold \$1 million worth of notes and \$1 million par

1
2 value of preference shares at a discount to
3 Hugo Oppenheim und Sohn Berlin, which bank then
4 sold the shares at par, thereby making a profit,
5 to Trans Commercial Acceptance; which company
6 Trans Commercial Acceptance financed the purchase
7 by borrowing moneys from British Mortgage and
8 Trust as to \$1½ million, and financed the
9 remainder from Commodore Sales Acceptance, and
10 then paid the proceeds of this sale of securities
11 to Commodore Sales Acceptance; the effect being
12 to transfer \$1½ million of debt theretofore
13 owing to Commodore Sales Acceptance to British
14 Mortgage and Trust?

15 A. Yes, sir.

16 Q. Anything else you particularly wish
17 to deal with?

18 A. When you say "discount", there
19 was 5 per cent discount.

20 Q. I beg your pardon?

21 A. The discount was 5 per cent.

22 Q. Yes, I am going to deal with
23 the discount when we come to Hugo Oppenheim.
24 Can we leave that point?

25 A. The only difference, Commodore
26 was only paying 6½, 6-3/4 per cent instead of
27 8½.

28 Q. Commodore Business Machines having
29 sold these securities was paying?
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J. Tramiel

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A. 6-3/4 per cent.

Q. The lesser rate of interest than if they hadn't sold its securities and continued to borrow the money?

A. Yes.

Q. Hugo Oppenheim und Sohn Pravatbank Berlin, which I will call Hugo (Berlin), the evidence has been that an interest in that company was acquired at different times between September and December, 1964, as a result of which at the end of the calendar year just over 80 per cent of the shares of the Hugo (Berlin) bank were registered in your name. Starting there, is that substantially true?

A. Yes, sir.

Q. Will you explain when you first conceived the idea, if you did, of purchasing any interest in a bank in Europe?

A. I believe it was some time the beginning of the summer of 1964.

Q. Beginning of which month?

A. The beginning of the summer. June, maybe.

Q. Of the summer. I am sorry, yes. Then, what did you do from there on?

A. I had a discussion with Mr. Morgan, mentioning to him if we can buy an interest in a small bank in Berlin maybe we can borrow money

J. Tramiel

11808

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3 at the lower interest for our German subsidiary
4 than transferring moneys of Commodore Business
5 Machines (Canada) Limited to Germany.

6 Q. Who did you intend would be the
7 buyer at that time?

8 A. My intention was that Commodore
9 would be.

10 Q. Commodore Business Machines?

11 A. Yes.

12 Q. So, you conceived an idea of having
13 Commodore Business Machines purchase a bank in
14 Germany so that that bank might be able to
15 lend money to Commodore Business Machines
16 subsidiary, Willy Feiler, at a lower rate of
17 interest than Commodore Business Machines had
18 to pay; is that correct?

19 A. Yes, sir.

20 Q. What was Mr. Morgan's reaction to
21 that idea?

22 A. The idea was as long as we can
23 borrow money cheaper somewhere else it would be
24 a very good idea.

25 Q. Are we still speaking of the early
26 summer of 1964, now?

27 A. Yes.

28 Q. What was the next step taken, or
29 the next discussion had?

30 A. Well, this was -- I had a discussion

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with our lawyer in Berlin.

Q. Who was that, please?

A. Mr. -- Dr. Schultzer.

Q. Dr. Schultzer?

THE COMMISSIONER: S-c-h-u-l-t-z?

A. On the end is a "z". I told him
of my interest, and after a few weeks he told me
that he knows of a bank. He asked me to sign
a letter that indicates we buy the bank, we will
pay a commission.

MR. SHEPHERD: Q. What bank was this one?

A. The name of the bank was Grund Bezie
Handelsbank.

Q. Will you spell that for the Reporter?

A. I will give it to you.

THE COMMISSIONER: It is G-r-u-n-d B-e-s ---

A. G-r-u-n-d and B-e-z-i-c.

MR. SHEPHERD: Handels - H-a-n-d-e-l-s-b-a-n-k,
one word?

A. One word, yes.

Q. What steps did you take to implement
this purchase?

A. This time I met Mr. Wirth.

Q. What was his connection with the
matter?

A. He was one of the directors -- when
I say "director" a director in Germany, a director
is management, he was the managing director.

J. Tramiel

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Q. Of this bank that you were proposing
to look at?

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A. Yes.

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Q. Yes?

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A. And after investigating it, which
took quite a long time, I believe that I at one
of the meetings, I mentioned this to the board
of directors of Commodore Business Machines (Canada)
Limited. I was told that Commodore should
not be in the finance business. I still felt
it would be a good idea if we could have a
bank and borrow money at a lower rate.

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Q. Who among the directors opposed
this acquisition, do you recall?

16

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A. Who the name was, I don't know.

18

19

Q. Was Mr. Morgan in favour of the
idea or opposed to it?

20

21

22

A. Well, Mr. Morgan was usually waiting
how the meeting will go, and he was always on
the winning side.

23

24

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Q. In this particular instance, do
you recall what his position was? I think
you indicated previous to this he had taken
the position that the idea had merit?

27

28

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A. That particular moment he felt it
had merit, also that Commodore Business Machines
should not be in the finance business.

30

Q. Nothing was done, I take it, about

J. Tramiel

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that bank?

A. Oh, yes, it was.

Q. Continue, what was done?

A. We continued. At that time I borrowed some money personally from some friends of mine. The total investment, I believe, was something -- I am not sure of the exact investment, but I think it wasn't over a hundred thousand dollars.

Q. There was a loan made in or about September, 1964, to you from Trans Commercial Acceptance. Would that be the money to which you refer?

A. No. I know I have borrowed some money personally outside of any companies Mr. Morgan had any interest in.

Q. Now, you are proceeding, as it were, on your own, you are now dealing personally; is that it?

A. When you say personally, if I would have bought it the money still would have been loaned to Commodore Business Machines (Canada) Limited at a rate which was much more satisfactory, a much better rate than they were paying to Commodore Sales Acceptance.

Q. But had you bought this particular bank you would have owned ---

A. And the people which have loaned me

J. Tramiel

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1
2 money.

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4 THE COMMISSIONER: I do not understand
5 that, Mr. Tramiel. This seems to be a fixed
6 idea in your mind that when somebody loans you
7 money the lender owns whatever is purchased with
8 the money. Surely you are the one who owns it.
9 You may owe some money to the lender but you are
10 the man who owns whatever the asset is that has
11 been purchased.

12 A. May I say, Mr. Commissioner, when
13 a man -- in this case I am talking about the
14 present time -- is lending me money, the private
15 individual, and he is taking a risk, he is
16 entitled to share in the future profits in the
17 company.

18 Q. Well, as to that definition of
19 ownership and entitlement to share, please take
20 it from me it is contrary to the law, and, indeed,
21 the facts of any given situation that we have
22 discussed so far.

23 A. Mr. Commissioner, as far as the
24 private borrowing, like the last part, I have
25 applied for a number of loans in the United States
26 to the Small Business Administration, or ---
27 there is a number of banks in the United States.

28 Q. Yes, well ---

29 A. Every time I have asked for the
30 loan, Mr. Commissioner, they have asked for an

J. Tramiel

11813

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3 interest in the business, and a very high
4 interest, too. And they were licensed banks
5 from the United States Government.

6 Q. Well, it is a sad case. Do you
7 mean they have asked to be partners of yours?

8 A. Yes, sir.

9 Q. In your enterprise?

10 A. Yes.

11 Q. Not in the form of taking security,
12 in the form of being part owners?

13 A. Taking the security and part owners.

14 THE COMMISSIONER: Go ahead.

15 MR. SHEPHERD: Q. Do you mean, Mr. Tramiel,
16 in this particular instance, dealing with the
17 first bank named, you borrowed some money and
18 had you purchased that bank you would have enabled
19 those who loaned you the money to participate
20 in the equity of the bank so that they would
21 have been shareholders and you would have been
22 a shareholder?

23 A. Yes, sir.

24 Q. Yes. Now, what happened in
25 connection with this transaction, then?

26 A. When we checked out the bank
27 completely, we dealt with the man, I think the
28 bank was in a deficit, the figures weren't
29 correct, and everything else. And it got to
30 a point even the money I had deposited with the

J. Tramiel

11814

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3 bank for the down payment was used up before
4 we came to a closing. And where I had seen
5 that particular dealing I immediately withdrew
6 the money, which takes a week to get back,
7 because the money was used already for something
8 else. We just forgot about it.

9 Q. All right. What was the next step
10 in connection with the German banks?

11 A. The next step is that Mr. Schultzer
12 came up with another bank, and that was the Hugo
13 (Berlin) bank, the way you are saying it.

14 Q. Yes?

15 A. And the idea was at that time, I
16 have repaid the moneys what I have borrowed
17 from those individuals, and I went back to Mr.
18 Morgan again. I have told him there is a
19 bank to be purchased.

20 Q. How much money were you speaking
21 of to be invested in this bank originally?

22 A. \$125,000, sir.

23 Q. And what interest was that going
24 to buy you in the bank?

25 A. I know it was more than 50 per cent,
26 but the exact amount ---

27 Q. I see. So, you spoke to Mr.
28 Morgan. Now, what was this discussion?

29 A. No, I have to correct this, it
30 could not have been more than 50 per cent because

J. Tramiel

11815

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3 the total capital was a million and a half marks,
4 and half a million marks would only be 25 per
5 cent interest.

6 Q. It would be a third, wouldn't it?
7 A half a million marks would be a third of a
8 million and a half?

9 A. That would be treasury stock, sir.

10 Q. Yes. So, you spoke to Mr. Morgan
11 and what was that discussion?

12 A. Mr. Morgan still felt the same way,
13 if I can borrow money for Willy Feiler at a low
14 rate, would be a good idea.

15 Q. But if you bought only a 25 per
16 cent interest it would be correct, would it not,
17 you would not be able to influence the lending
18 policies of the bank and you would have no
19 assurance Willy Feiler could borrow?

20 A. No, I couldn't influence the
21 bank even if I had a hundred per cent if the
22 loan would not be right, if the loan would not
23 be good.

24 Q. You mean on the ground that the
25 professional manager, called Vorstand?
26 V-o-r-s-t-a-n-d?

27 A. I believe so.

28 Q. That he would have the authority
29 to decide on what loans the bank was to make;
30 is that correct?

J. Tramiel

11816

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A. Yes, sir.

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Q. That being so, how was the investment
in the shares of a bank going to help Willy
Feiler?

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6

A. Because Willy Feiler had very good
security which they could borrow against from a
bank which was willing to lend them the money.

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Q. What I am not clear on, Mr. Tramiel,
why Willy Feiler couldn't go to any bank, on
your explanation of how these banks operate,
and borrow money if it doesn't make any difference
whether you own shares in it?

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A. When I say it doesn't make any
difference, I say what interest I would have in
the bank, whether it would be 25 per cent or
100 per cent, the difference doesn't make any
difference. Knowing the management of the bank
or not knowing the management of the bank.

19

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23

Q. You say that if you had an interest
whether control or not you might have been able
to influence favourably the judgment of the
lending officers of the bank so that they would
lend to Willy Feiler?

24

25

26

27

A. The bank would look more favourably
on the Willy Feiler account.

28

29

Q. Had Willy Feiler made any attempts
to borrow from banks in Germany?

30

A. When Commodore Business Machines

J. Tramiel

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bought Willy Feiler, Mr. Feiler didn't -- Willy Feiler was not a company, it was strictly a proprietorship.

Q. Yes?

A. He guaranteed the loans personally. And when we bought it and we made it a limited company, the bank has withdrawn the loans.

Q. Yes?

A. We had a loan with American Express for one million marks.

Q. Yes?

A. They didn't want to go any higher than the one million marks. There was still in German banks -- they didn't have as much --- You see, I was mentioning in the German financial world, on the German bank, and I was looking for more money for Willy Feiler, because this was our manufacturing facility, and we wanted more money there.

Q. You took this proposal, I take it, to Mr. Morgan?

A. Yes.

Q. You are now speaking of \$125,000 investment?

A. Yes, sir.

Q. What is Mr. Morgan's reaction to it?

A. Yes, let's go into this.

Q. And what did you do then?

J. Tramiel

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A. He advised me we should get the money there.

Q. Is this the money you got from Trans Commercial Acceptance?

A. I believe this is where it was.

Q. Yes. Then, please describe in your own words the progress of the transaction from here on.

A. Then I went to -- back to our lawyer. I think he has drawn up the papers of buying this 125,000 marks (sic) ---

Q. This is Dr. Schultzer again?

A. Yes. It wasn't done immediately, I came back to Canada. And on my trips to Canada I told him of the progress being made. And he mentioned to me, "Well, Jack, why don't we invest a larger sum of money than the half million marks?".

Q. Did he give you any reason for this suggestion?

A. The only reason he gave me was when I explained to him on what basis the German bank is working on, if they have a higher capital they can borrow more money. This was explained to me. He felt by having a bigger investment in the bank we might be able to borrow more money. And he was explaining to me of the shortage of money that Atlantic Acceptance has.

J. Tramiel

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Q. What is the ratio between the invested capital in the bank and the amount of money that the bank is able to borrow from the public, no doubt in the form of receiving deposits?

A. It was explained to me that they are allowed to borrow twenty times of the capital.

Q. When you say "borrow", would that mean that there is a ratio fixed between the amount of invested capital in the bank and the aggregate amount they are allowed to have on deposit from customers?

A. No, they are allowed to borrow, this is what was told me, from the other banks, from the central bank. It had nothing to do with deposits.

Q. So, it was your understanding, then, for every dollar of equity in the bank the bank would be entitled to borrow \$20 from the central bank or other banks?

A. This was my understanding.

Q. Just in passing, did that prove to be incorrect?

A. I don't think the law is still correct, but it is still up to the central bank and the other banks to lend money against security.

Q. It is true, you still have to find somebody to lend money?

J. Tramiel

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A. Yes.

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Q. All right. What did Mr. Morgan say then, developing the matter on which you have touched?

5

6

A. He just mentioned that he would like to invest a greater amount of money, that the bank should be a ten million marks bank.

7

8

9

Q. And how was this going to assist Atlantic to overcome the shortage of money it was experiencing?

10

11

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A. They would be able to borrow money or sell secured notes or notes of Atlantic or something of this nature. Mr. Morgan mentioned he to me, even intends to go to some other European capital and borrowing money. I am not sure if this was the time when there was some restriction from the United States or not.

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Q. Then, so I understand that, Mr. Morgan envisaged that the bank in Germany would be able to borrow money, and that the greater the capital of the bank, the more money it could borrow, and that the bank would then be able to lend the money to Atlantic Acceptance, which would assist that latter company in overcoming its problems of getting money?

25

26

A. Yes, sir. At that time, I say again, I must have been in Germany again. I have advised Mr. Schultzer -- or, Dr. Schultzer --

J. Tramiel

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3 again, instead of increasing the capital for
4 a half a million marks it should be increased
5 to ten million marks. Here he had worked on
6 it a half a million mark transaction before.

7 Q. Yes?

8 A. I believe we were partners already
9 with the half-million marks. And then he went
10 on to increase it to ten million marks.

11 Q. Did Mr. Morgan indicate to you where
12 the money would come from to enable you to take
13 down your proportionate share of the ten million
14 mark capitalization?

15 A. No, sir.
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19 (Page 11821 follows)
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Q. Did he say that he would supply the money?

A. Yes, sir.

Q. What did he say about it?

A. Just advised me when the money is required and I will send it down to you. When I was in Germany I called -- I told him -- that Mr. Scholze said, it could be done, and three days later I believe the money arrived by Telex or by telegram.

Q. Yes?

A. To the bank.

Q. Would that be the sum of \$2,075,000? My recollection of the amount.

A. To cover this 80 per cent of interest.

Q. At all events, it was an amount slightly in excess of \$2,000,000?

A. Yes, sir.

Q. What was your understanding at that time, as to who was borrowing that money?

A. Evermac Office Equipment.

Q. How did you come to that understanding?

A. This was told to me when I left.

Q. By?

A. Mr. Morgan.

Q. Do I understand now, that Mr. Morgan

said, that the capital of the bank should be
This page generously brought to you by Anil Sharma

J. Tramiel

11822

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increased to 10,000,000 marks, approximately

3

\$2 1/2 million in our money, that he, Mr. Morgan,

4

would cause the required money to be made

5

available and that the interest in the bank so

6

acquired was to be the property of Evermac

7

Office Equipment Company Limited?

8

A. Yes, sir.

9

Q. Right. What was done? You got the

10

money and then what did you do?

11

A. Then, I am not sure of the procedures

12

that Mr. Scholze went through with the legal

13

procedure, what should be done.

14

Q. I put it to you, Mr. Tramiel, that

15

the shares were in fact issued in your name and

16

not in the name of Evermac Office Equipment. Why

17

was that done?

18

A. I was told at that time that, by

19

one of the -- by Mr. Scholze or one of his people

20

there, and Dr. Scholze took it that it would be

21

easier to do the transaction through an individual

22

name as far as signing and notarizing it and

23

everything else. A man on the spot -- it could

24

be transferred afterwards to the corporation or

25

to any corporation. I have mentioned this to

26

Mr. Morgan when -- before the money was sent and

27

he felt that this was the way to do it that way.

28

Q. Why were the shares then not trans-

29

ferred to Evermac Office Equipment?

30

A. I believe they were.

J. Tramiel

11823

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Q. When did you think they were?

3

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A. Well, I never seen the actual shares,
because I believe the shares had to be printed

5

and the shares -- that is the only time I received

6

the correspondence from the bank from Hugo

7

Oppenheim (Berlin) offering American Express, was

8

some time in June that the shares were available

9

and ready to be shipped and I even asked then

10

Mr. Morgan, where they should be shipped to and

11

he told me they should be shipped to British

12

Mortgage for deposit.

13

14

Q. When did you believe for the first
time, that these shares were issued in Evermac's
name?

15

16

A. At all times.

17

Q. Did you give . . .

18

19

A. When you say, "issued in Evermac's
name" ---

20

Q. Yes?

21

22

A. They could have been issued in my
name, but I knew that I -- and I do believe -- we
have signed something. I have signed some kind
of trust agreement, whatever it is.

24

25

26

Q. Indeed they were issued in your
name, Mr. Tramiel, and remained in your name.

27

Perhaps you misunderstood my question before.

28

I was asking you why the shares were never

29

registered in the name of Evermac if it was

30

intended that Evermac own them?

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A. Well, Mr. Shepherd, I don't know if there is such a thing as registered shares in Germany. Personally, I don't believe there was a name on the shares at all. There is no names on shares in Germany. There is -- they are in street names.

Q. Whom did the directors of the Hugo (Berlin) Bank believe owned these shares?

A. Well, Mr. Morgan has met Mr. Wirth. I had a number of discussions with Mr. Wirth.

Q. Yes?

A. And I believed that they have known that in some form or some way, Mr. Morgan owns them.

Q. Did Mr. Wirth believe up until the time of the collapse of Atlantic that you personally owned these shares?

A. I don't think so.

Q. What about Baron Von Rheden, can you state whether or not he believed or had any grounds to believe, that you personally owned these shares?

A. I think Mr. -- I think Baron Von Rheden had, because of this Lucayan Beach situation, a little bit closer relation with Mr. Morgan when he was there, and I believe that Mr. Rheden discussed the bank situation with Mr. Morgan.

Q. Yes?

J. Tramiel

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A. But, like I say, again, if I explain to him exactly what it is, but I know they had discussions who was the owner, and Mr. Morgan made sufficiently sure to tell him, he owns the hotel. He owns everything, and this is what Mr. Rheden explained to me.

Q. Then, do you say that while Mr. Wirth and Baron Von Rheden may not have known the very name of the person or corporation beneficially owning the 80 per cent interest, they knew that it was not you, personally?

A. Yes, sir.

Q. Is that what you are saying?

A. Yes, sir.

Q. The loan of \$2,000,000 being as you have said, intended to be made to Evermac Office Equipment, can you state whether you ever signed a promissory note to Aurora on behalf of Evermac for that \$2,000,000?

A. I don't recall signing a note, sir.

Q. The evidence has been that no one has been able to find the existence of any such note. Can you assist us as to whether it was ever intended that money be paid to Atlantic by anybody?

A. I didn't know, even know the money was borrowed from Atlantic.

Q. When Mr. Morgan told you that he would cause the funds to be advanced, from what

J. Tramiel

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source did you think those funds were coming?

A. I had no idea. Mr. Morgan had a lot of connections as far as money is concerned.

Q. Might I take it that the thought that that money might conceivably be coming from Atlantic Acceptance would have crossed your mind?

A. If it did or didn't -- like I say, maybe it could.

Q. Were you puzzled by the fact that although this money was loaned to Evermac, you, a necessary signing officer of Evermac, were never called upon to sign a promissory note or other evidence of indebtedness?

A. Not at all. Because there wasn't the time when Mr. Morgan asked me to -- to sign something -- I didn't sign.

Q. Yes?

A. And the same way -- if he didn't ask me to sign it, I didn't sign.

Q. May I take it then, that you did not think about or concern yourself about the absence of a promissory note in respect of this \$2,000,000?

A. I wasn't even in the country, in Toronto.

Q. Yes?

A. When the money was transferred to Germany, and I didn't even think about it at all as far as signing, because I was strictly a

J. Tramiel

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2 nominee. Again, it is up to Mr. Morgan to ask
3 me to sign it or not, and I figured maybe he
4 signed it himself.

5 Q. When did you first become aware if
6 you did, of the source of this \$2,000,000 loan to
7 Evermac?

8 A. I believe when I came back, I knew
9 it came from Aurora when I came back from Germany.

10 Q. How did you learn that?

11 A. I have asked Mr. Wagman, I am not
12 sure if I knew. I have asked somebody who the
13 loan came from.

14 Q. Yes. When did you first hear from
15 anyone that it was intended that Hugo Oppenheim
16 would use the moneys or the greater part thereof
17 which had been paid into that bank by you on
18 behalf of Evermac, for the purchase of Atlantic
19 Acceptance Corporation shares?

20 A. When I came back and Mr. Morgan told
21 me that he has a company or individual, which
22 would like to buy a block of Atlantic stock.

23 Q. Yes?

24 A. And he needs some financing. He
25 believes that it will be a good idea if Hugo
26 (Berlin) could finance this transaction.

27 Q. Yes?

28 A. I said if it is Atlantic stock,
29 which I believe is good security, and if you can
30 speak to Mr. Wirth and if everything is all right,

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I don't see any reasons why you shouldn't do it.

Q. Yes?

A. Or why it couldn't be done. This is the time when I have learned about the transaction of the Atlantic stock.

Q. What did you understand the transaction was to be?

A. Like I said.

Q. Who was buying the Atlantic stock?

A. I don't know if I found out then who the name of the company is, but I found out afterwards that the company was a company called Cimcony.

Q. Yes?

A. And Mr. Weinrott, which would buy the stock from Hugo Oppenheim (Berlin) and give him a third -- and 30 per cent or 33 per cent down payment on the total amount of the stock, keep the total stock as security and make a 10 cent profit per share.

Q. Yes?

A. And pay 7 per cent interest or something of this nature.

Q. Did you have the intention at the time that you completed the purchase of Hugo Oppenheim of operating Hugo Oppenheim? I refer to the Berlin company, Hugo (Berlin), as a bank?

A. My intention?

Q. Yes.

J. Tramiel

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2 A. My intention was that it was a bank.

3 Q. And, was it your wish that it
4 continue and expand its banking functions? That
5 is, receiving deposits and making loans?

6 A. I believe that my intention was like
7 I said, to make sure that something that I
8 recommended to Mr. Morgan -- it would make a
9 profit.

10 Q. Did you intend then that its principal
11 business would consist in dealing in securities of
12 Atlantic Acceptance?

13 A. Not at the beginning, no.

14 Q. When did you change your policy on
15 that?

16 A. I didn't have a policy, Mr. Shepherd,
17 the policy was guided by Mr. Morgan, but it would
18 be up to me personally. I would recommend to
19 the general manager of the bank to lend money on
20 something which is secured. How was it will be,
21 or what kind of business, thereby the most
22 important should be if they lend money, the money
23 should be secured.

24 Q. What did you understand the trans-
25 action with Cimcony Limited to be as far as the
26 bank was concerned?

27 A. That they will buy a certain amount
28 of shares.

29 Q. Who will, please?

30 A. Hugo Oppenheim.

J. Tramiel

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Q. Yes?

A. They will sell the shares to Cimcony. They will receive a certain amount of money and they will hold the shares as security and in eighteen months Cimcony will pay the rest and get the shares.

MR. SHEPHERD: Could I have Exhibit 1000.1, and 1000.2, please, and 3397?

Q. Perhaps you could assist me on this, Mr. Tramiel. I show you Exhibit 1000.2 and Exhibit 3397. Exhibit 1000.2 is an agreement between Hugo (Berlin) and Cimcony Limited, relating to the sale of 81,500 shares of Atlantic Acceptance, and that agreement, you will observe, is set out in German and in English ultimately, you see?

A. Yes.

Q. And I call to your attention that Exhibit 3397 is a translation of the German portion of the agreement insofar as it relates to paragraph 1. In the agreement signed by Cimcony and Hugo (Berlin), in the English version of that agreement, it states under paragraph 1:

"The seller hereby grants unto the
"buyer an option to purchase the said
"shares, which option shall lapse on
"the 23rd day of April, 1966."

The German text, however, says -- as we
are informed by this translation Exhibit 3397,

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"The seller sells these shares to the

3

"buyer as of April 23rd, 1966."

4

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So, I direct your attention to the fact
that in the document which was signed by the

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contracting parties, the English version says

7

that the bank is granting to the purchaser an

8

option and the German text of that same agreement,

9

the bank is not granting an option. It is selling

10

the shares.

11

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Now, which was the agreement and can you

assist us as to why the German text is different

13

from the English text?

14

15

A. Well, I read the German text and

the German text is right. It says "selling".

16

17

When this thing was signed -- I did not

look at it when it was signed.

18

19

Q. Can you help us as to why the English

text refers to the granting of an option only as

20

opposed to selling the shares?

21

22

A. I don't think there was any specific

reason for it. The understanding was that in

23

European -- again -- it is sold. Mr. Weinrott

24

made specifically the point how important it is

25

for him to own those shares.

26

27

Q. Can you state whether Mr. Weinrott

speaks German? Perhaps you don't know?

28

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A. I don't think so.

Q. You don't think he does?

30

A. No. He didn't speak in German when

J. Tramiel

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I was present when Mr. Wirth was there.

Q. It would be fair, I suppose, to suppose that Mr. Weinrott would be looking at the English version of the text which grants to him a very valuable right, an option to purchase those shares, but no obligation?

A. What Mr. Weinrott thought, I could not answer you, sir.

Q. Can you help us any more than you have on why the German version of the contract is different from the English version?

A. No, but the only thing Mr. Shepherd, again, by guessing.

Q. Yes?

A. What reason would there be why he would put a down payment down of six hundred and some thousand dollars if he only has an option?

Q. Well, I think that is explicable, Mr. Tramiel. I put to you Exhibit 1000.1 which shows that the form which the transaction took was not a down payment on a block of 120,000, but as you will see here by Exhibit 1000.1, Cimcony Limited purchased outright and absolutely 38,500 shares of Atlantic and paid cash?

A. Yes.

Q. Then by a separate and second agreement, Cimcony either agreed firmly to purchase the remaining 80,000-odd shares, or else, Cimcony received an option to buy them. Depending on

J. Tramiel

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whether you read the German text or the English
text?

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A. The only -- if I might ask a
question, Mr. Commissioner?

5

6

MR. SHEPHERD: Q. Yes?

7

A. If it was an option and if Cimcony
has bought the shares, why didn't they keep them?

8

9

Q. Do you refer now to the 38,000
shares, Mr. Tramiel?

10

11

A. Yes.

12

Q. Yes. I think you will find that
is dealt with as well in the contract relating
to the 80,000 shares odd, whereby Cimcony Limited
is required to pledge with Hugo (Berlin) those
38,000 shares as security for the payment of
what is referred to as an option fee, as I
recall it, of approximately \$9,000 a month,
which sum looks as though it is really interest
on the purchase price of those shares. I think
if you look at the agreement you will find that
the deposit of those shares is treated in that
manner.

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May I take it, Mr. Tramiel, that you cannot
assist us as to why the German text varies from
the English text in that particular agreement?

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A. I cannot help you as far as the
text, but I could help you that my understanding
was that it was sold.

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29

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Q. It was a firm sale?

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A. This was my understanding.

3

Q. May I take it then, that it is the

4

German text which reflects your understanding of

5

what the transaction was?

6

A. Yes, sir.

7

Q. Did you, yourself, notice the

8

difference between the English text and the

9

German text?

10

A. No, I didn't see the contract.

11

Q. Yes. Who prepared the contract?

12

Can you say?

13

A. When I was present in the room in

14

Nassau in Cimcony's offices ---

15

Q. Yes?

16

A. --- Mr. Morgan came down with a

17

number of documents, I believe with a letter

18

signed by his lawyer. Was it 'Hesco', the

19

lawyers for Atlantic Acceptance?

20

Q. That would be a letter certifying

21

to the purchasers that the shares of Atlantic

22

Acceptance were validly issued and not subject

23

to recall and the like?

24

A. Yes.

25

Q. Yes?

26

A. This was from the company attorney.

27

Q. But it was that very contract there,

28

the one in German and English. I wonder if you

29

could assist us as to who prepared that?

30

A. And then there was a contract with

J. Tramiel

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Mr. Wirth and Mr. Rheden has bought with him.

3

Q. Yes?

4

A. This could have been the one that they have bought with them.

5

Q. Yes?

6

A. I am not sure -- I did not look at the contract, but I knew that Mr. Morgan had certain ones and Mr. Wirth had certain contracts.

C/4

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11

Q. Was Mr. Weinrott present? I take it he was at the closing of this transaction?

12

13

A. He was. Yes.

14

Q. Yes. Can you assist us as to whether he appeared to read the contract he was signing which involved \$1,600,000-odd?

16

17

A. He was reading something, yes.

18

Q. I wonder if you could help us as to why, if he appeared to read that contract?

19

20

A. I am not sure. I did not say "this contract". I knew that he was reading some, some of the letters, but exactly what he was reading, I don't know, sir.

23

24

Q. Yes. Can you help us at all as to why Mr. Weinrott apparently led you to believe by his actions and his conversation, that he considered that he was purchasing those shares absolutely, but he signed a contract the version of which in the language which he understood,

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indicated that he was receiving an option?

J. Tramiel

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A. One, I remember for the simple reason, Mr. Shepherd, is that I knew that the interest -- not the interest, the dividends from those shares . . .

Q. Yes?

A. . . . were payable to Mr. -- to Cimcony.

Q. Yes?

A. Like the owner. If it will be an option, he wouldn't have gotten the dividends. I am just trying to recollect in my mind what basis, but I knew he was getting the dividend payments or whenever the dividend was made from Atlantic.

Q. Well, I take it you can't assist us any more than you have on this mystery?

A. No, sir.

Q. We have already touched upon a part of the transaction which occurred then in December, 1964, after the shares had been taken down by you, acting as you have asserted, on behalf of Evermac, and I would like to deal with one particular aspect of that.

Evidence was given that in December, 1964, Five Wheels Limited sold 100,000 shares of Commodore Business Machines (Canada) Limited, to Hugo (Berlin), for \$500,000, and that Hugo (Berlin) then sold those shares to Trans Commercial Acceptance for \$650,000. That Trans Commercial

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ERRATA VOL. 95

Acceptance paid out by way of dividend, its surplus to Associated Canadian Holdings and then, Associated Canadian Holdings sold Trans Commercial Acceptance at a sum approximately equal to the book value of the shares of Trans Commercial Acceptance to Hugo (Berlin). So that Trans Commercial Acceptance became a subsidiary of Hugo (Berlin).

Can you assist me as to what this transaction is all about, particularly the Five Wheels sale of 100,000 Commodore Business Machines shares, and I should tell you that the market price when Five Wheels sold 100,000 shares was in the order of \$6 to \$6.50, when they sold at \$5 a share?

A. Well, I can be of help, is that Hugo Oppenheim (Berlin) in December, wanted to do all the business which was done in North America through Trans Commercial, being their **DAUGHTER** company. That would be the reason of the sale of the Commodore stock from Five Wheels.

Q. I am sorry. I don't follow that. Why would Five Wheels sell 100,000 shares at \$5 against a market price of \$6 to \$6.50, because of Hugo (Berlin)?

A. I have answered you the second question first.

Q. Well then, continue, please?

A. Why Five Wheels was selling the shares for \$5, instead of \$6. That part I could

J. Tramiel

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not help you, because this was something which
Mr. Morgan, I believe, being chairman of Five
Wheels at that time, worked out with Five Wheels.

Q. You were a director of Five Wheels
at that time, were you not?

A. I believe I was.

Q. And you were an officer of the
purchasing company, Hugo (Berlin). Can you not
assist us further as to why they would sell at
that price?

A. As far as -- no, I could not assist
you. I can only guess that Mr. Morgan may have
told them, if they wanted to sell them to the
market, they would not get this amount of money,
but it is only guessing.

Q. Then Hugo (Berlin) sells to Trans
Commercial Acceptance for \$650,000. Why were you,
as an officer of Trans Commercial Acceptance,
content to pay \$650,000 for an asset which Five
Wheels had just finished selling for \$500,000?

A. Because I did not act as an officer
with my own authority. I was acting on behalf of
Mr. Morgan.

Q. In respect of your connection with
Trans Commercial Acceptance?

A. On all those companies.

Q. Yes. Do you say that you acted only
on the instructions of Mr. Morgan in respect of
Hugo (Berlin) also?

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2 A. Yes.

3 Q. Mr. Morgan was not at any time an
4 officer of the German bank, was he?

5 A. No.

6 Q. Nor was he a director?

7 A. No.

8 Q. Nor, indeed, was he a shareholder?

9 A. I held the shares for him.

10 Q. Yes. Well, you held the shares for
11 Evermac Office Equipment Company Limited, did you
12 not?

13 A. Which in my opinion, he was the
14 owner.

15 Q. Why would you take instructions as
16 chairman of the board of a bank in Germany, as to
17 what that bank is to do, from Mr. C. Powell Morgan?

18 A. Because, as I have said previously,
19 he was the man which have bought the shares, who
20 put up the money and, in my opinion, he had the
21 full authority, but I did not give any instructions
22 to the German bank. We could only approve or
23 disapprove transactions which the management
24 wanted to do. We could only recommend trans-
25 actions to be made, but not exercise them without
26 the approval, complete approval, of the professional
27 manager. As you have said, Mr. Shepherd, before,
28 and also he -- the professional manager, Mr.
29 Wirth, any large transaction, he usually got
30 approved by the Central Bank.

J. Tramiel

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Q. When you approved or disapproved actions by that bank, were you exercising your own independent judgment as a director and chairman of the board, or were you doing what you were told to do by the president of Atlantic Acceptance Corporation?

A. I exercised what I was told to do and what I was not told to do, and I believe it was not too important. I used to tell Mr. Morgan afterwards if it was not important. If it was something important as far as lending a large sum of money, before I approved it in any way, I have discussed it with Mr. Morgan.

Q. When Hugo (Berlin) bought these 100,000 shares of Commodore Business Machines for half a million dollars, did you approve that purchase?

A. I believe this particular discussion was when Mr. Wirth and Mr. Rheden was here in Toronto.

Q. Yes?

A. It was discussed with Mr. Morgan.

Q. When Hugo (Berlin) sold it to Trans Commercial Acceptance at a profit of \$150,000, obviously that was to the benefit of Hugo (Berlin), was it not?

A. Yes.

Q. Why did Hugo (Berlin) then purchase the shares of Trans Commercial Acceptance from

J. Tramiel

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Associated Canadian Holdings?

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A. Because, one, like I said again, this was explained by Mr. Morgan to Mr. Wirth when he was there and, number two, I believe they wanted to have a going -- this is what he told them -- that this is a going finance company and he is trying to borrow money. If they could finance this business, this Trans Commercial Acceptance, it would be a very good business for them.

Q. Do you say that Mr. Wirth and Baron Von Rheden approved the purchase of the shares of Trans Commercial Acceptance by Hugo (Berlin) before the transaction was completed?

A. Yes, sir.

Q. I should tell you, Mr. Tramiel, that you no doubt have seen, as chairman of the board, the statements, financial statements, of the bank at the end of December, 1946, from which it is asserted that the purchase of Trans Commercial Acceptance was completed without the authority or knowledge of the other directors. Could you assist the Commission by commenting on whether that statement in the financial report of Hugo (Berlin) is correct, or not correct? Would you like to see the statement?

A. Yes, sir.

THE COMMISSIONER: We will take a fifteen minutes recess.

J. Tramiel

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---A short recess.

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MR. SHEPHERD: Q. Mr. Tramiel, you have had an opportunity, have you not, to look at Exhibit 3296, consisting in part, a German text of a report and an English translation thereof. Is that so?

8

A. Yes, sir.

9

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Q. Now, I want to read to you from the English, and are you able to follow the German, so that you can tell whether or not the English translation is reasonably accurate?

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A. Yes.

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Q. It reads in part as follows:

"In the course of a meeting of the

"Board of Directors dated December 12,

"1964, Management was authorized to

"organize a subsidiary company in

"Canada in accordance with recommendations

"made by the Board.

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"Prior to this, the recommendation "was made to Management at a meeting of "the Board dated October 1, 1964, to "acquire the existing finance company "Trans Commercial Acceptance Ltd. as "a subsidiary, of course after completing "the necessary scrutinies and inves- "tigations. However, after checking "out Trans Commercial Acceptance Ltd.,

"Baron Von Rheden-Rheden, Deputy Chairman

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"of the Board, and Mr. Wirth, member of
"the Management, gained the conviction
"that it would be of greater advantage
"not to acquire an existing finance
"company but to form a new company.
"The formation of the Hugo Oppenheim-
"bank (Canada) Ltd. was taken into
"consideration and a draft of a partner-
"ship agreement drawn up with the help
"of the Canadian firm of solicitors
"Solomon & Singer."

Then, I will skip the portion dealing with
the composition of the board and the like.

A. Yes, sir.

Q. "As already mentioned, the formation
"of the Hugo Oppenheimbank (Canada) Ltd.
"was approved by the Board of Directors
"in its meeting of December 12, 1964,
"providing its recommendations and the
"provisions of the partnership agreement
"were observed."

Then, going down to this paragraph, skipping
down and going to this paragraph, this is what I
wanted to put to you. The report states:

"On December 24, 1964, the Hugo
"Oppenheimbank (Canada) Ltd., without
"the knowledge of the officers of the
"Company, acquired a 100 per cent
"interest in Trans Commercial Acceptance Ltd.

J. Tramiel

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"from Associated Canadian Holdings Ltd.,
"that is an interest in a finance company
"the acquisition of which was turned
"down by Mr. Wirth, an officer of the
"Company and by Baron Von Rheden-Rheden,
"Deputy Chairman of the Board. In the
"course of a meeting of the Board of
"Directors of the Hugo Oppenheimbank
"(Canada) Ltd. the capital stock of
"the Hugo Oppenheimbank (Canada) Ltd.
"was transferred to the Hugo Oppenheim
"& Sohn Nachs. Berliner Privatbank A.G."

And I am ceasing to quote, but further in the
report, it specifically says that the directors
of Hugo (Berlin) most certainly thereafter by
their conduct ratified the purchase of Trans
Commercial Acceptance, but that report says
that the directors of the bank did not know
nor did they approve of the acquisition of
Trans Commercial Acceptance by Hugo Oppenheimbank
(Canada) Limited, a subsidiary of the German
bank.

What can you say to assist the Commission
on this matter?

A. One, when you are saying a report,
this is the statement from the general manager
of the bank. This is an audit report which I
did not see and I was the chairman of the board
and the reason why I didn't see it was because

J. Tramiel

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this report was published after June 14th.

3

Q. Yes?

4

A. And his report was written after

5

June 14th.

6

Q. Can you assist us as to whether

7

the statement is true?

8

A. No. It is not true.

9

Q. What is the true history of the

10

acquisition of Trans Commercial Acceptance

11

Limited?

12

A. When those gentlemen were here

13

talking about the -- Baron Rheden and Mr. Wirth ---

14

Q. Yes?

15

A. And looked over Trans Commercial,

16

and they knew about the transaction of Five

17

Wheels at that time.

18

Q. Yes?

19

A. Of buying the shares after discussing

20

between themselves, they felt that it would be

21

better to open up a new company in Canada which

22

should be called Oppenheimbank of Canada.

23

Q. Yes?

24

A. And this company should acquire

25

Trans Commercial because if they would acquire

26

Trans Commercial they said, it will take them a

27

longer period of time to get it approved by the

28

German authorities.

29

Q. Yes?

30

A. But to open up a brand new company

J. Tramiel

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would be better for them.

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No. 2, this statement here, Mr. Shepherd, was prepared by a company called Arthur Anderson, which when I became chairman have demanded that we should employ Art Anderson as the auditor to make sure that the statement is correct and right.

9

Q. Yes?

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A. Which even the general manager wasn't very happy about it, because he felt -- well, he will not be able to explain in the proper way which I had to convince him that Art Anderson in Germany is a German auditor, but they do know international accounting. So, as far as the figures is concerned were correct. But, as far as the statement is concerned -- the president's message was written after June 14th.

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Q. Then do you say, to sum it up, that you are satisfied the information set out respecting the acquisition of Trans Commercial Acceptance in the Arthur Anderson report was obtained by Arthur Anderson from the management of the bank? Is that correct?

26

A. Correct.

27

Q. And do you refer to Mr. Wirth?

28

A. Yes.

29

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Q. And do you say that insofar as that information is concerned, is to the effect that

J. Tramiel

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the directors of Hugo (Berlin) did not know that Hugo Oppenheimbank (Canada) Limited acquired the shares of Trans Commercial Acceptance and did not approve of such acquisition in advance, because they had considered it and turned it down. That these statements are untrue. Is that correct?

A. Mr. Wirth in his report says also, that a silent approval may, however, have been taken for granted. He states it himself in the report.

Q. Well, Mr. Tramiel, would you not agree, there is a difference between saying that silent approval may have been taken for granted and actual approval being obtained and he is saying, that no approval was obtained and indeed the management of the bank rejected the idea of purchasing Trans Commercial Acceptance?

A. Then, why would he say that the silent approval might have been taken for granted?

Q. Mr. Tramiel, it is, I think, a matter of some considerable importance to you to explain as best you can and put forward your own position respecting this. Do you say that Mr. Wirth did know in advance of the purchase of Trans Commercial Acceptance shares that Hugo Oppenheimbank intended to purchase those shares and that he did approve it in advance?

J. Tramiel

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A. Yes. He did, sir.

3

Q. And how did he communicate that

4

approval to you?

5

A. Verbally.

6

Q. On what occasion was it?

7

A. When he was here.

8

Q. Is this when he was here in November,

9

following the completion or preceding the

10

completion of the Cimcony transaction in Nassau?

11

A. When Hugo Oppenheim (Canada) was

12

formed.

13

Q. And do you say that Baron Von Rheden

14

also knew and approved of the acquisition of

15

Trans Commercial Acceptance by the wholly-owned

16

Canadian subsidiary of Hugo (Berlin) before the

17

transaction was consummated?

18

A. Yes, sir. Because even one of the

19

reasons, Mr. Shepherd, when they have granted the

20

loan of \$650,000, to Trans Commercial, the way

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they have explained to me, if it would be a

22

complete stranger, they would have to give a

23

complete report to the bank, to the Central Bank,

24

but because it was a subsidiary, they didn't have to.

25

Q. What did they want Trans Commercial

26

Acceptance to do?

27

A. To continue in the finance business

28

in Canada.

29

Q. Why did they want two such companies,

30

Hugo Oppenheimbank (Canada) Limited and also Trans

J. Tramiel

11849

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2 Commercial Acceptance?

3 A. Well, the way they have explained
4 to us when they were here, is to buy a going
5 concern would take them a certain amount of time
6 to get it approved, but to open up a subsidiary,
7 brand new, they could get the approval much
8 faster.

9 THE COMMISSIONER: Q. It is approval by
10 whom, Mr. Tramiel?

11 A. By Central Bank, sir.

12 Q. Yes?

13 A. I had discussions personally with
14 Art Anderson about this Trans Commercial many
15 times, because Art Anderson was also our auditor
16 in the factory.

17 MR. SHEPHERD: Q. You are speaking of the
18 Willy Feiler plant?

19 A. Yes.

20 Q. Yes?

21 A. And just -- it seems this was written
22 after June 14th and Mr. Wirth started to take a
23 different position.

24 Q. Was Hugo Oppenheimbank (Canada)
25 Limited intended to take part in the business of
26 financing ventures?

27 A. I believe it was more intent --
28 I am not sure -- but I believe -- I believe, it
29 was more intent to be like a holding company for
30 the German bank.

J. Tramiel

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Q. Did it in fact discharge that
function?

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A. I don't know. Well, it wasn't that
long, sir. It was -- this is in December and
everything stopped in June.

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Q. Could you assist us as to why, once
Hugo Oppenheimbank was formed, the bank required
Trans Commercial Acceptance at all? That is
what I am not clear on.

11

12

A. Because I think it was a going
company by then.

13

14

Q. But it dealt only with Mr. Morgan's
companies?

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Q. Is there anything more that you wish
to say concerning the acquisition of Trans
Commercial Acceptance?

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A. No.

Q. Evidence was given, Mr. Tramiel,
before the Commission, relating to the disposition
of the 120,000 shares of Atlantic Acceptance
Corporation, which Hugo Oppenheim acquired in
November, 1964, and I would be glad to show you
the documents if you require them. Perhaps first,
I can put the transaction to you and you may be
sufficiently familiar with it to be able to assist
us.

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30

The evidence was that on the 4th of March,
1965, a share certificate for 4,000 shares of

J. Tramiel

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2 Atlantic Acceptance Corporation Limited, apparently
3 the property of Hugo (Berlin) and forming part of
4 this block of 120,000 shares, and I might say in
5 parentheses, the property of Hugo (Berlin) subject
6 to any rights Cimcony may have had, that such a
7 certificate for 4,000 shares was delivered to
8 Barrett, Goodfellow, and Barrett, Goodfellow were
9 directed to hold those shares together with certain
10 other securities, and to pay a \$100,000 out for
11 the benefit of Associated Canadian Holdings, and
12 Associated Canadian Holdings recorded that it
13 intended this money for the purchase of^a Lucayan
14 Beach investment in some form.

15 Now, stopping there, are you familiar
16 generally with the transaction so that you can
17 describe it?

18 A. I am familiar with the \$100,000.

19 Q. Yes?

20 A. Which was invested in L.B.H. Manage-
21 ment. The money came from Barrett, Goodfellow from
22 the Associated account.

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24 (Page 11851 follows)
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J. Tramiel

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Q. In whose name did that investment of 100,000 in L.B.H. Management stand thereafter?

A. I believe in Associated Canadian Holdings.

Q. What securities were issued to Associated Canadian Holdings for that payment?

A. I believe the shares, part of the shares of the company.

Q. Of L.B.H. Management?

A. Yes.

Q. Do you recall the number of shares or the percentage?

A. Mr. Shepherd, this company was, again, a company which was to help out Mr. Morgan.

Q. Yes?

A. Morgan asked to form this company; he asked that Associated should become a partner with the company, a 50 per cent partner. I didn't see the shares - to answer your question, it was my opinion it was not done to make a profit. From me, as one of the officers of Associated, was to help out Mr. Morgan in the problem that he had in Freeport.

Q. Was it not intended that L.B.H. Management would make a profit?

A. Mr. Morgan was telling me it could make a big profit.

Q. Yes?

J. Tramiel

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A. I didn't see it, that it would make a big profit. I was there only to make sure, to help Mr. Morgan out of this predicament in Freeport.

Q. Why are 4,000 shares in Atlantic apparently, subject to such explanation as you may be able to give, the property of Hugo (Berlin) pledged with Barrett, Goodfellow for the benefit of Associated Canadian Holdings?

A. I believe that Associated Canadian Holdings had in the portfolio a certain amount of Atlantic shares.

Q. Yes?

A. Which shares they were I couldn't answer you. I know that they have pledged through Mr. Goodfellow shares which they have owned.

Q. Are you able to state whether any shares of Atlantic Acceptance forming part of the block of 120,000 shares purchased by Hugo (Berlin) were delivered to Barrett, Goodfellow to stand as security for the moneys advanced to Associated Canadian Holdings?

A. No, I can only state that no shares of Hugo Oppenheim (Canada) were given as security for this loan, for the \$100,000.

I know that Associated had the 4,000 shares of stock. If the name, you notice on

J. Tramiel

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3 the certificate, was not Hugo Oppenheim, then I
4 couldn't answer you.

5 Q. I was referring to Hugo Oppenheim
6 (Berlin). Were any shares in which Hugo Oppenheim
7 (Berlin) had any interest as owner, subject to
8 any claims Cimcony might have had, pledged for
9 the benefit of Associated Canadian Holdings?

10 A. No, I don't see any reason why
11 they would have done it. To answer your
12 question, the way you said "Berlin", there was
13 a discussion I had with Mr. Morgan and telling
14 him the trouble with Mr. Wirth, with payments
15 to Cimcony as far as the dividends are concerned.

16 Q. Yes?

17 A. Because he is receiving the
18 dividends from Atlantic less withholding tax.

19 Q. Yes?

20 A. Mr. Weinrott was entitled to the
21 total amount. This is what Mr. Wirth was
22 explaining to me.

23 Q. Yes?

24 A. At that time Mr. Morgan told me
25 this. Mr. Wirth, if he would transfer all of
26 the shares to the subsidiary, Hugo Oppenheim
27 (Canada) he could avoid this tax.

28 Q. Yes?

29 A. And I have told him so, and the
30 shares were transferred piece by piece till the

J. Tramiel

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total amount was transferred.

Q. Approximately when did this occur?

A. Maybe March. Exact dates I am not really sure.

Q. What would be the bracket of time within which you considered this occurred?

A. I would say starting maybe February.

Q. And ending?

A. May.

Q. So the block of shares which Hugo (Berlin) had purchased were brought to Canada, is that correct?

A. Yes, sir.

Q. Who brought them?

A. They were mailed. I brought them personally, a certain amount, when I was there.

Q. Were they transferred into the name of Hugo Oppenheimbank (Canada) Limited?

A. I believe some of them were.

Q. Then I take it these share certificates were endorsed by Hugo Oppenheim (Berlin)?

A. Yes.

Q. When you received them?

A. Yes, I believe they were.

Q. Did Hugo Oppenheimbank (Canada) Limited then own the shares which were registered in their name?

J. Tramiel

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3 A. The legal part of this I couldn't
4 answer you, sir, if they owned them or not.

5 Q. I put it to you that Hugo Oppenheim-
6 bank (Canada) Limited does not record any payment
7 to its parent or any liability to its parent in
8 respect of the acquisition of those shares. Does
9 that agree with your recollection?

10 A. Yes.

11 Q. So these shares then are in the
12 hands of Hugo Oppenheimbank (Canada) Limited for
13 what purpose?

14 A. One, as Mr. Morgan put it, this way
15 Mr. Weinrott will be able to receive the total
16 amount of dividend from Atlantic Acceptance.

17 Q. Yes?

18 A. And he would not have to pay the
19 withholding tax. This is one of the reasons,
20 at that time.

21 Q. And what rights did Hugo Oppenheimbank
22 (Canada) Limited have then to deal with those
23 shares, to deal with them as it chose?

24 A. I believe so.

25 Q. Sell them, pledge them, do anything
26 it chose with them, although Hugo Oppenheimbank
27 (Canada) Limited had not paid its parent or set
28 up any liability to pay them?

29 A. I think any shares which they would
30 sell, they would give a credit. Again, I did not

J. Tramiel

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3 go into this particular part exactly how it worked.
4 If there would be a problem in it, I think I
5 would have been advised and then I would go over
6 to Mr. Morgan and talk to him about how and what
7 should be done about it.

8 Q. If these shares were brought here
9 for the purpose of avoiding withholding tax for
10 Cimcony Limited, would it not have been necessary
11 to register them in the name of Hugo Oppenheimbank
12 (Canada) Limited as soon as they were received?

13 A. Mr. Shepherd, this is what I was
14 told, and when they came in, if they were
15 transferred into the name of Hugo Oppenheim I cannot
16 answer you, because I did not look into the
17 affairs on a daily basis, and I was only called
18 in if somebody wanted to have a question answered.

19 Q. Who had physical possession of
20 these shares?

21 A. I believe Hugo Oppenheim (Canada).

22 Q. Where?

23 A. In Toronto.

24 Q. In a safety deposit box?

25 A. I believe so. I really don't know.

26 Q. Who would be the officers of Hugo
27 Oppenheimbank (Canada) Limited?

28 A. I believe that I was the president
29 of the company. I'm not sure. Was I?

30 Q. Yes.

J. Tramiel

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A. Wasn't the Baron the president?
I was an officer of the company.

Q. You were the Canadian officer in
any event, were you not?

A. Yes.

Q. Let me put this to you. Did Hugo
Oppenheim und Sohn Pravatbank Berlin authorize
the pledging of any shares of Atlantic Acceptance
Corporation Limited to stand as security for
moneys advanced to Associated Canadian Holdings
Limited?

A. I don't know if each specific
loan was given an approval, but I know there
was a total approval, but as far as the dealings
in Canada is concerned I think they even gave
me a letter that we can deal, buy and sell
securities in Hugo Oppenheim (Canada) on behalf
of the German bank.

Q. Could you pledge the securities
of the bank or its subsidiary for the benefit
of another company, that is what I am trying to
get at.

A. That way you are putting it to me,
I am only guessing, and from my own guessing I
don't think I could for another company, but
if the individuals who owned the companies
would have agreed to it, like I said, I would
have done it. I didn't do it on my own, if it

J. Tramiel

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3 was done. I don't recall any particular case
4 like this.

5 Q. Let us deal specifically with these
6 4,000 shares which were pledged with Barrett,
7 Goodfellow.

8 A. Well, could you show me those documents,
9 sir?

10 Q. Yes. Could I have Exhibit 3418,
11 please. I begin by showing you Exhibit 3418,
12 which is a printed form addressed to Barrett,
13 Goodfellow and Company, dated March 4, 1965,
14 reading:

15 " Please accept this document as
16 "your authorization to receive from
17 "Associated Canadian Holdings 4,000
18 "shares of Atlantic Acceptance
19 "Corporation for their account against
20 "payment by you of \$100,000, the debit
21 "to be passed to their account.

22 " Yours very truly,

23 " Associated Canadian Holdings

24 " (Signed) Jack Tramiel."

25 That is your signature, Mr. Tramiel?

26 A. Yes.

27 Q. Can you assist us as to where those
28 shares came from?

29 A. I believe from Associated Canadian
30 Holdings.

J. Tramiel

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Q. You believe that they are the property of Associated Canadian Holdings?

A. Yes, sir.

Q. Did Associated Canadian Holdings buy any part of the block of 120,000 shares from Hugo (Berlin)?

A. This I couldn't assist you.

Q. If Associated Canadian Holdings did purchase any of that block of shares, would it be fair to suppose that it would be recorded in the books of Associated Canadian Holdings and in the books of Hugo Oppenheim (Berlin)?

A. Are you asking me to guess?

Q. You mean that you consider it quite possible that Associated Canadian Holdings would have purchased \$80,000 worth of shares from Hugo Oppenheim (Berlin) and the transaction would not be recorded in Associated Canadian Holdings books or the books of Hugo (Berlin)?

A. As far as Associated is concerned I couldn't answer you, because Mr. Wagman was handling the books. As far as ---

Q. Dealing then with those very shares which you directed Barrett, Goodfellow to hold, can you tell us whether or not Hugo Oppenheim (Berlin) or Hugo Oppenheimbank (Canada) authorized the pledging of those shares for the benefit of Associated Canadian Holdings?

J. Tramiel

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A. Mr. Shepherd, do we have here a statement from Associated which shows the securities which Associated held?

Q. Yes, certainly, Mr. Tramiel.

A. On that day.

Q. We also have several hours of evidence showing that those shares came from the block of 120,000 shares owned by Hugo (Berlin).

A. Well, I'm not talking of evidence. As far as do we have -- can I see that list?

Q. Yes, of course. Then you will be able to assist us, will you, and you will be able to say that those shares are the property of Associated Canadian Holdings or are not the property of Associated Canadian Holdings.

A. Only by guessing. I know that ---

Q. Well, is it of a great deal of assistance and worth the time and trouble, Mr. Tramiel, if you are not going to be able to assist us much more than that?

A. No, because I do recall in my mind Associated Canadian Holdings did own a certain amount of Atlantic stock.

Q. Indeed they did, Mr. Tramiel. There is no question about that. I concede it readily.

A. If they did, why didn't they transfer their own stock?

Q. Mr. Tramiel, the question I am putting

J. Tramiel

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3 to you is: There has been a great deal of
4 evidence before this Commission that this stock
5 appears to be the property of Hugo Oppenheimbank
6 (Berlin). I am asking you, can you tell us
7 where that stock came from, or can you tell us
8 whether or not Hugo Oppenheimbank (Berlin)
9 authorized the pledging of shares which were
10 its property for the benefit of Associated
11 Canadian Holdings?

12 A. My answer is that if Associated
13 did not buy the stock, then the stock belonged
14 to Associated Canadian Holdings, which they have
15 given to Barrett, Goodfellow.

16 Q. I show you a letter, Exhibit 3419,
17 addressed to Hugo Oppenheim und Sohn Nachf,
18 but the address is shown as 946 Warden Avenue,
19 Scarborough, Ontario, "Attention Mr. Kapp" and
20 signed by Mr. Wagman. I will read it:

21 "Dear Sir:

22 " We enclose herewith our cheque
23 "in the amount of \$420, representing
24 "the dividend credit to us and relating
25 "to Atlantic Acceptance Corporation
26 "shares dividend on 2,100 common
27 "shares owned by you. We trust you
28 "will find this in order and remain,

29 " Yours truly,

30 " Associated Canadian Holdings,

This page generously brought to you by Anil Sharma
" Per H. Wagman."

J. Tramiel

11862

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3 There is attached a deposit receipt indicating
4 that that \$420. was deposited to the account
5 of the Berlin bank here in Canada. Can you
6 assist us as to why Associated Canadian Holdings
7 is paying to the Berlin bank a dividend arising
8 out of shares owned by the Berlin bank but
9 received by Associated Canadian Holdings?

10 A. Mr. Shepherd, if the shares were
11 made out to the German bank, wouldn't the
12 dividend be sent directly to the German bank?

13 Q. Oh, Mr. Tramiel, I suggest that
14 since you were dealing with this block of
15 shares, you know as well as I do that many of
16 those shares were registered in the name of
17 O'Brien and Williams, they were in street form.

18 A. So they were not in Hugo Oppenheim's
19 name.

20 Q. Quite correct, they were not
21 registered in the name of Hugo Oppenheim; they
22 were in street form. Why is Associated
23 Canadian Holdings sending a dividend cheque to
24 Hugo (Berlin) bank for shares owned by the
25 Hugo (Berlin) bank if Associated Canadian
26 Holdings does not have any shares which were
27 owned by the Hugo (Berlin) bank?

28 A. I couldn't answer you. It could
29 have been they paid it after the dividend or
30 before the dividend, and this particular letter

J. Tramiel

11863

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3 I have never seen and I didn't know Mr. Wagman
4 is so formal of sending out letters like this.
5 It was always discussed verbally.

6 Q. Did Mr. Wagman write, so far as you
7 were aware, on many occasions to the Hugo Oppenheim-
8 bank of Berlin addressed to the address of Commodore
9 Business Machines on Warden Avenue?

10 A. I don't recall any letters.

11 Q. Is there anything further you can
12 assist us on in respect of this matter, or may we
13 pass on?

14 A. I believe I gave you the answer as
15 much as I can.

16 Q. Thank you. Evidence was given
17 before the Commission generally to the effect that
18 on 10th June, 1965 Commodore Business Machines
19 (Canada) Limited entered into an agreement with
20 Traders Finance Corporation or one of its
21 subsidiaries, whereby Commodore Business Machines
22 (Canada) Limited was borrowing, if memory serves
23 me, the sum of \$3 million. Is that correct -
24 \$3 million?

25 A. A little bit less, I believe, about
26 two million nine.

27 Q. May I have Exhibit 3420, please.
28 You and Mr. Kapp, for the additional security of
29 the lending company, pledged 75,000 shares of
30 common stock of Atlantic Acceptance for this loan.

J. Tramiel

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3 Could I have Exhibit 997.1, please. Evidence
4 was further given that there is in existence,
5 and the document was produced, a contract made
6 between you and Mr. Kapp on the one hand, and
7 Hugo Oppenheimbank (Canada) Limited on the other,
8 relating to the purchase of 75,000 shares on
9 terms set out in the agreement. Could I have
10 Exhibit 997.2, please. Evidence was further
11 given that there is in existence a document signed
12 by Mr. Wirth and Mr. Lange on behalf of Hugo
13 Oppenheim und Sohn Berlin relating to this
14 matter and granting certain consents. Now, I
15 will show you the documents, but first, generally,
16 are you familiar with this transaction?

17 A. Yes, I am.
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22 (Page 11865 follows)
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J. Tramiel

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Q. I show you Exhibit 3420, which is the contract whereby Traders Realty Limited is lending moneys to Commodore Business Machines (Canada) Limited. It is \$3 million, I observe.

And I show you Exhibit 997.1, being the agreement between Hugo Oppenheimbank and yourself and Mr. Kapp; and 997.2, being a document not titled, but which I will call a consent.

Now, with those documents in front of you can you assist us as to what this transaction was about?

A. Commodore Business Machines bought a company called Wilson Stationers.

Q. Yes?

A. It was approved by the board of directors of Commodore and Mr. Morgan, and especially Mr. Gregory, before it was approved, and at the meeting, told management that when the date of closing will come about we will have the moneys to pay for it. At one point we didn't have the money to pay for this transaction.

Q. May I take it, Mr. Tramiel, that you understood they were expressing more than a pious hope but were indicating they would make available the money?

A. Yes.

Q. Did you say Mr. Morgan and Mr. Gregory?

A. Yes.

J. Tramiel

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Q. Did they make this assertion in such form that you considered the moneys would be jointly found by them?

A. No, no. But there was never any difficulties, these gentlemen have agreed to a transaction at the board of directors, I have no doubts all that money will be given or lent to the company to pay when it is required.

Q. So, in the belief, then, that the money would be found by one or other or both of these directors, I take it the company agreed to purchase Wilson Stationers?

A. Yes.

Q. Then what happened?

A. When we came to the last few days of the closing I have advised Mr. Morgan that this is now coming to the closing and we will require the money.

Q. And approximately when would this be? I believe the transaction was to be completed around the 14th of June, was it not?

A. Yes, I believe so.

Q. Approximately when would it be you informed Mr. Morgan that you now required the money?

A. It could have been the 15th of May or the 1st of June.

Q. Yes. And what was his reply?

J. Tramiel

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A. His reply that he is very, very short of money at the present time, and I should try and get the money someplace else. That was a tremendous shock to me.

Q. What step did you take then?

A. I started to ask everybody who I have seen if he knows where I can borrow \$3 million.

Q. Is that the first occasion on which Mr. Morgan had found it necessary to declare himself unable to come up with the money when required?

A. Yes, sir. And I had a number of discussions with a number of finance companies in New York City. And they all --- I could see they would take a long time to complete it. Anyway, I applied for the loan.

And then Mr. Solomon has recommended that we should see Traders.

Q. Did you approach Mr. Gregory in this connection, in the light of what you have said?

A. I did. When I say I approached him, Mr. Gregory told me that he is trying to get some loans paid because he is short of money, too, like private loans he made against the debentures of Commodore, etc. I did not see any sense to go to Mr. Gregory if he was trying to get a loanback for \$100,000. I don't know if

J. Tramiel

11868

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3 I had a meeting -- I believe there was a board
4 of directors meeting and the telling of these
5 difficulties, what should be done. To me it
6 was quite important. And I also felt the
7 company was an excellent company for Commodore
8 Business Machines.

9 Q. Yes?

10 A. Anyway, we went to Traders. They
11 looked at it. And a few days later we went
12 there again and they gave us certain terms on what
13 basis they would lend the money -- or they indicated
14 it to Mr. Solomon. I am not sure. They said
15 they wanted personal guarantees from the officers
16 of the company plus additional security for so-and-
17 so many dollars.

18 When I had this information I went to Mr.
19 Morgan and told him those are the basis I can borrow
20 the money. He asked me, "Is there some way you
21 can get security?" I advised him we had securities
22 in those companies and those companies which he
23 was owner of. I said, "Could we those? Could
24 we those?". He said, "Well, if it is going to
25 help you get the loan, go ahead."

26 He told me on what basis this agreement
27 should be worked out.

28 We went back to Mr. Solomon. We had
29 written up an agreement. I believe that we have
30 paid -- Commodore has paid 3 per cent interest for

J. Tramiel

11869

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3 the time of this option of the agreement, for
4 the borrowing or selling the shares.

5 Q. I am sorry, I didn't follow you on
6 that, Mr. Tramiel.

7 A. I believe we borrowed the shares or
8 the shares were sold to us, we had an option to
9 buy them.

10 Q. You are talking now of the shares
11 of Atlantic Acceptance?

12 A. Yes, sir.

13 Q. The 75,000 shares?

14 A. Yes. Commodore Business Machines
15 was paying 3 per cent interest for this guarantee.

16 Q. That is to say, you and Mr. Kapp
17 extended personally your guarantee, and Commodore
18 Business Machines (Canada) Limited paid 3 per cent
19 of the sum guaranteed as recompense for you having
20 extended the guarantee?

21 A. Yes. In turn we have paid this to
22 Hugo Oppenheim (Canada) Limited; with this
23 security and with the personal guarantee Traders
24 granted the loan.

25 Q. And how did you get -- perhaps it
26 would assist to look at the contract with Hugo
27 Oppenheimbank (Canada) Limited. How did you get
28 those 75,000 shares of Atlantic Acceptance which
29 you pledged?

30 A. That would be Hugo Oppenheim (Canada)

J. Tramiel

11870

Limited.

Q. And do you say you purchased them from Hugo Oppenheimbank (Canada) Limited?

A. We had the right to buy them at the end or to return them at the end of the agreement.

Q. I think while you are indeed giving the essence of it, Mr. Tramiel, the form is a little different. I call to your attention the Hugo Oppenheimbank ---

THE COMMISSIONER: It is what exhibit?

MR. SHEPHERD: 997.1, Mr. Commissioner.

Q. Hugo Oppenheimbank (Canada) is called the vendor, and you and Mr. Kapp are called the purchasers. It recites that the vendor is the owner of 75,000 shares of Atlantic Acceptance, and the vendor has agreed to sell these shares to you and Mr. Kapp. And it provides that you and Mr. Kapp will purchase from Hugo Oppenheimbank (Canada) those shares at a price of \$20 per share, the total price being \$1,500,000. And the vendor, Hugo Oppenheimbank represents and warrants, as of the date of closing, it will be -- I am sorry, (a) the vendor is the owner of the said Atlantic shares; and (b) said Atlantic shares are free and clear of all liens, charges and encumbrances of every nature and kind whatsoever.

Then it states that you are to pay for

J. Tramiel

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3 theses shares by delivering to Hugo Oppenheimbank
4 (Canada) a promissory note in the form which
5 is attached. It is a 6 per cent note, falling
6 due as to principal and interest on the 14th
7 of March, 1966; and that Hugo Oppenheimbank is
8 to execute and deliver to you on closing a
9 "put option agreement" in a form attached, which
10 put option agreement provides in essence that
11 at any time up to the 1st of March, 1966,
12 which is the date on which the note falls due,
13 you and Mr. Kapp have the right to hand the
14 shares back to Hugo Oppenheimbank (Canada) Limited,
15 in which case they will re-acquire them at
16 \$20 a share.

17 Is that your recollection of the contract?

18 A. My recollection is the way I
19 mentioned to you before, but you go into detail
20 the way the contract is.

21 Q. Yes. So, the contract, you will
22 agree, indicates that you bought these shares
23 on the terms that you gave a promissory note for
24 the purchase price, and the vendor gave you a
25 put option agreement entitling you and Mr. Kapp
26 to hand the shares back at any time up to the
27 1st of March, 1966, at \$20 per share?

28 A. Yes.

29 Q. Who negotiated that contract on
30 behalf of Hugo Oppenheimbank (Canada) Limited?

J. Tramiel

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A. I did.

Q. And what knowledge did the Berlin bank have of the transaction, and when did they acquire it? I direct your attention to the next exhibit, 997.2, I think. The document I referred to as a consent?

A. Yes, sir.

Q. Now, can you assist us as to what the knowledge of the Berlin bank was of this transaction, and when they acquired it, and how they acquired it?

A. The first knowledge is, which was in my opinion the man which controlled all those companies, which was Mr. Morgan, and he had knowledge before anything started, that this is the basis I can get the loan from Traders. When I say "I", that Commodore Business Machines (Canada) Limited can get the loan from Traders. So, he was advised first, and he put the thing in motion on what basis and how it should be done.

Q. Yes?

A. And this was done by telephone or in some form, Mr. Wirth was advised of the transaction.

Q. Who telephoned him, Mr. Tramiel?

A. At the present time I don't recall who telephoned him. Maybe ---

J. Tramiel

11873

THE COMMISSIONER: Was it you?

A. It could have been. It could have been. But right at this particular moment I don't recall. It could also have been that I was there before the actual transaction took place.

MR. SHEPHERD: Q. I suppose almost anything could be, Mr. Tramiel, but can you not assist us as to how the Hugo(Berlin) bank learned of this transaction?

A. By telling him, by telling him in some form, me personally, because I was very often in Germany, almost every month.

Q. You were not in Germany between the 10th and 14th of June, 1964, Mr. Tramiel, and time is very narrow in this instance.

A. I could have been before when I already knew on what basis we could borrow from Traders.

Q. I should have thought, Mr. Tramiel, if it were you to whom fell the task of explaining to Hugo Oppenheim (Berlin) why they should enter into this transaction, or consent to their subsidiary entering into it, that conversation would have stuck in your mind, you would never forget it.

A. The only thing that stuck in my mind at this time, Mr. Shepherd, that I employed Mr. Wirth in the German bank to find the \$3 million,

J. Tramiel

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2 too. So, there was a discussion about it.

3 Q. Do you feel obliged, then, to
4 leave it that while you were confident in some
5 manner Hugo Oppenheim (Berlin) officers or
6 directors heard in advance about this dealing
7 with 75,000 Atlantic shares, having a price of
8 one and a half million dollars, you are not
9 at the moment able to tell us precisely how it
10 was communicated to them, or who it was who
11 communicated it?
12

13 A. How I mean who, it must have been
14 me. But here we have a document which was
15 signed by them, so they must have known about it.

16 Q. I am certainly coming to that.
17 You say it must have been you. Do you recall?

18 A. I don't recall.

19 Q. Telling them?

20 A. I was telling them about the
21 transaction. The exact date I don't recall,
22 don't recall the exact conversation, but I know I
23 told them. I know we discussed \$3 million loan.
24 I know we have advertised in Europe to try to
25 borrow the \$3 million. And I can only assume
26 that I discussed it with them, because they just
27 wouldn't have given me this particular letter.

28 Q. Now, when did you get the letter?
29 I put it to you, Mr. Tramiel, in fairness to
30 you, you got the letter in July. I ask you, did

J. Tramiel

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you get it in July?

A. I could have.

Q. That is to say, when you were over on the occasion of the settlement of all the claims and counterclaims which existed after Atlantic's collapse?

A. I don't know if I wasn't there before that.

Q. Well, when were you in Berlin after the 14th of June?

A. I can't -- I was there very, very often, and especially after --- When you mention July, it could have been after the 14th of June, immediately after the 14th of June, because the factory would have been completely shook up because of Atlantic. The people knew Mr. Morgan, knowing he was chairman of Atlantic, and Mr. Feiler knew. I must have been there right after.

THE COMMISSIONER: You appreciate "it could have been" and "I believe" does not advance the state of our knowledge very much further. Were you there or were you not? You must remember, this is only what, eighteen months ago, and at a time of critical importance in your business affairs. Now, surely you remember whether you were in Berlin or not?

A. Mr. Commissioner, I have spent a tremendous amount of time in Berlin. I was going

J. Tramiel

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3 to Berlin almost on a weekly basis. And to say
4 the exact date, I am not in the position to
5 answer you on that basis.

6 Q. I do not think anybody is asking
7 you the exact date. We are asking you whether
8 you were in Berlin in July, immediately -- or,
9 in June, I think it is, is it not?

10 MR. SHEPHERD: June or July.

11 THE COMMISSIONER: Q. If you were in Berlin
12 in June or July immediately after the collapse of
13 Atlantic?

14 A. I believe I was. That is all I
15 can answer you, sir.

16 Q. Well, "believe" -- If you want my
17 opinion, at this stage you can answer yes or no.

18 A. I can't say yes or no, because I
19 do not have the facts.

20 Q. In that case, I do not believe you.
21 Is that clear? And you are speaking on oath.

22 Proceed.

23 MR. SHEPHERD: Q. Was it after the collapse
24 of Atlantic that the consent of Hugo Berlin was
25 executed to this transaction with Hugo Oppenheim-
26 bank (Canada) and yourself and Mr. Kapp?

27 A. Mr. Shepherd, I would like to
28 answer you, but I am a little bit at the present
29 time upset. If you do not believe me, how
30 can I answer it?

J. Tramiel

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Q. It is difficult for anyone to say they believe the answer until you have made it.

A. I was told before he can't believe me. It is very difficult for me to continue saying anything if you don't believe me.

Q. Well, Mr. Tramiel, do you know whether you received that consent -- or, let me put it this way, do you know whether that consent was executed after the collapse of Atlantic?

A. This consent was given to me before.

Q. Ah! Then, it would have been given to you prior to the 15th of June; is that correct? Is that right?

MR. POMERANT: I wonder ---

THE COMMISSIONER: Yes, Mr. Pomerant?

MR. POMERANT: Mr. Commissioner, Mr. Tramiel has indicated to me that he would like to say something to me. I know it is somewhat unusual. I wonder if this might be, it being so close to the luncheon hour, sir, if it might be convenient to have a recess?

THE COMMISSIONER: And if -- And, of course, I have no idea what Mr. Tramiel wants to communicate to you, but let me put this clearly: I am not indicating that I do not accept all of Mr. Tramiel's evidence or any particular part, other than that specific question which was put

J. Tramiel

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3 about his recollection of being in Berlin in
4 June or July, 1965, shortly after the collapse
5 of Atlantic Acceptance. I find that impossible
6 to accept, and only that.

7
8 ---Whereupon the hearing adjourned at 12:57 p.m.
9 to resume at 2:30 p.m.
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J. Tramiel

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---On resuming at 2:30 p.m.

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---The witness resumes the stand.

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MR.SHEPHERD: Q. Have you had an opportunity, Mr.Tramiel, to examine such records as you wished to examine, to determine when in the months of June and July, you were in Berlin?

10

A. Yes. I did, sir.

11

Q. What result, please?

12

A. I was in Berlin on June 11th. I was in Berlin on July 12th, and I made another trip between those two dates.

14

15

Q. Where does this information come from, Mr. Tramiel?

16

17

A. In my passport.

18

Q. Yes. When did you arrive in Berlin in respect of your 11th of June trip?

19

20

A. I have checked.

21

Q. How long were you there?

22

A. I have only checked out the stamps in my passport.

23

24

Q. Yes?

25

A. And this is -- Now, this is the facts, what I made a statement previously that I don't recall the exact dates.

26

27

Q. Well, how many days? Can you assist us? Were you in Berlin on the occasion

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of the 11th of June trip? The trip in respect of

J. Tramiel

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3 which there is a stamp for the 11th of June, 1965.

4 A. Mr. Shepherd, I am taking this
5 very seriously. I was called here as a witness.
6 You remind me a number of times that I am under
7 oath. I am trying to answer the question, a
8 "yes" or "no". If I remember. If I don't
9 remember -- I have got to say it, that I don't
10 recall.

11 Q. Well, then, is that your answer?
12 That you do not know how long you were in Berlin
13 on the occasion of your attendance on the 11th
14 of June, 1965?

15 A. The exact days, no.

16 THE COMMISSIONER: Q. Well, putting on
17 one side the exact days, was it a short visit or
18 a long one? Was it two or three days, or two
19 or three weeks?

20 A. Most of my visits, Mr. Commissioner,
21 were short. I am travelling in '65 constantly.
22 I could have been in Europe any times. Four
23 times a month, so they must have been short.

24 Q. Well, that would be your answer.
25 It was a short visit. Is that right?

26 A. Yes.

27 MR. SHEPHERD: Q. Do you have your pass-
28 port with you?

29 A. No, I don't.

30 Q. Would you undertake that perhaps Mr.

J. Tramiel

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Pomerant could bring it in at his early convenience, so that we might examine it and perhaps by looking at it we could determine the exact length of the stay in each case.

A. I will be more than glad to give it to Mr. Pomerant, but you could not determine the length of stay because when you arrive in Germany there is no stamp. You only see it when you leave.

Q. I see. So, the 11th of June, would have been then the day that you left Germany?

A. Berlin, Berlin.

Q. And we are speaking of the 11th of June, 1965?

A. Yes, sir.

Q. Go ahead, please.

A. There are no stamps in Germany. There is only stamps in the passport in West Berlin.

Q. Would you look again at this agreement, Exhibit 3420, which bears a date saying it to have been made as of the 10th of June, 1965?

A. Yes, sir.

Q. Can you assist us as to when that document would have been executed. This is the agreement between Traders Realty and Commodore Business Machines and yourself and Mr. Kapp?

A. Well, the date as of June 10th, I

J. Tramiel

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3 was here on that particular day or not, I could
4 not answer you again. It could have been that
5 day or before or after.

6 Q. You have no recollection whether
7 it was before or after June 10th or June 9th?

8 A. No, I don't.

9 Q. Well then, I show you an invoice
10 taken from the files of Commodore Business
11 Machines (Canada) Limited, bearing a date, 26th
12 June, 1965, reading: "Re Mr. J. Tramiel to
13 Berlin June 26th, 1965, one aeroplane ticket.",
14 followed by the particulars.

15 Looking at that, may one safely take it
16 that you went to Berlin on the 26th of June, 1965,
17 as well?

18 A. No. Just because the invoice was
19 June the 26th, does not mean the date I travelled
20 was June 26th.

21 Q. But your record says "Re Mr.J.
22 Tramiel to Berlin June 26th,1965".

23 A. It could have been.

24 Q. Did your passport show your
25 attendance on that occasion?

26 A. What I am asking my wife to look
27 into - the passport - did not give me the date of
28 June 26th.

29 Q. I see. Was the consent of the
30 Hugo Oppenheim ---

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J. Tramiel

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A. And, if I may -- ?

Q. Yes.

A. -- say once more -- if you leave one of the airports in Berlin, you get your passport stamped. If you leave a different way, it is not being stamped. So, this just by accident-like, by looking at the passport, we had the date of June 11th, but I could have been there and not have this stamped in my passport.

Q. That is June 11th, 1965?

A. Yes, sir.

Q. Were you present when Mr. Wirth and Mr. Lange signed the consent to the transaction between yourself and Mr. Kapp and Hugo Oppenheimbank of Canada Limited?

A. Well, if I was there and this was signed on June 11th, I must have brought it along with me.

Q. Well, I would like your recollection, Mr. Tramiel. Do you recall being present when that document was signed?

A. I don't recall the exact or to give you the exact answer -- if I brought it back with me or not.

Q. I didn't ask you whether or not you brought it back. I asked you whether you were present when it was signed.

A. I believe I was.

J. Tramiel

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Q. Then, is it your belief that that document was signed on the 11th of June, 1965?

A. Yes.

Q. Why did Hugo (Berlin) agree to this transaction?

A. Because they were making a profit, sir.

Q. How?

A. Hugo Oppenheim (Canada) was receiving an interest on this transaction.

Q. Yes. You say that the fact that Hugo Oppenheim (Canada) was to receive, and did receive interest at any rate of 6 per cent for the interval of time in which you held those shares against which at that date, Hugo (Berlin) would have offset, of course, the dividends paid on the shares, which under the terms of the agreement became your property, that it was upon that ground that Hugo (Berlin) consented to this deal?

A. Well, I don't recall what you mentioned about dividends. I knew that they were paying -- we had to pay -- a certain interest to Hugo Oppenheim.

Q. Yes. I refer to Exhibit 997.1 in terms of the option contract, which provides that any -- and I am abbreviating -- any dividends

J. Tramiel

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3 made by Atlantic Acceptance Corporation Limited,
4 on or after the date hereof and before the date
5 of exercise of this option or before the expiry
6 date hereof, whichever be later, save and except
7 the dividend payable on June 15th, 1965, shall
8 be paid over to the undersigned. That is to
9 say, Hugo Oppenheimbank (Canada) to be applied
10 against certain indebtedness owing by Jack
11 Tramiel and Manfred Kapp to the undersigned.
12 Is that correct?

13 A. Yes.

14 Q. So it is plain, is it not, that
15 the benefit of the dividend was to accrue to
16 the purchasers of these shares?

17 A. Yes, after June 15th.

18 Q. Yes?

19 A. I believe, and up to that Atlantic
20 was paying the dividends quarterly.

21 Q. Yes?

22 A. If I may take a look?

23 Q. I believe that is correct, Mr.
24 Tramiel.

25 A. That this agreement is for seven
26 months, I believe.

27 Q. It is until March, 1966, from June,
28 1965. So, it would be approximately nine or
29 ten months.

30 A. That is the reason why I have

J. Tramiel

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3 mentioned it previously, that the figure was
4 a lower amount of 6 per cent, that we had to pay,
5 because we were getting a certain amount of money
6 back in the dividends.

7 Q. Now, Hugo (Berlin) then, on the 11th
8 of June, 1965, consented to an arrangement whereby
9 Hugo Oppenheimbank (Canada) Limited would and
10 did deliver to you 75,000 shares of Atlantic
11 Acceptance at a value of \$1½ million on terms
12 whereby you and Mr. Kapp could hold those shares
13 until the 1st of March of the following year,
14 and if during that time you elected to pay the
15 note and keep the shares, of course you were at
16 liberty to do so, but if for example, the
17 value of these shares were to decline, you
18 had a right to hand these shares back and be
19 credited with the \$1½ million. Is that correct?

20 A. Yes.

21 Q. And at the time that Hugo Oppenheim
22 (Berlin) entered into this transaction or
23 consented to it, that is on the 11th of June,
24 1965, that company was obliged, was it not, upon
25 demand by Cimcony Limited, to deliver to Cimcony
26 Limited, 88,000 shares approximately, or a number
27 of shares in excess of 80,000, when Cimcony
28 Limited had paid the moneys that it owed.
29 Is that correct?

30 A. Yes.

J. Tramiel

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Q. If, therefore, the price of Atlantic shares rose above \$20 per share and Cimcony Limited paid the purchase price, Hugo (Berlin) would have been obliged to go out on the market and buy 75,000 shares in order to make good their obligation to Cimcony Limited, because you had their 75,000 shares which you had bought. Is that correct?

A. Yes.

Q. Why did they enter into that arrangement?

A. This is still the same arrangement.

Q. Yes?

A. I have answered the question, because they wanted to make a profit.

Q. The profit being the difference between the dividends and the 6 per cent interest?

A. Yes, sir.

Q. And you say that Hugo (Berlin) were prepared to run the risks entailed in their arrangement with Cimcony for that profit. Is that correct?

A. We didn't discuss it, but it seems that what you are saying is correct.

Q. Did you consider that an imprudent transaction from the viewpoint of the bank?

A. Yes.

Q. Did you in your capacity as chairman

J. Tramiel

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2 of the bank, give your assent to it?

3
4 A. Yes.

5
6 Q. Why?

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8 A. Because it was a profitable
9 transaction.

10
11 Q. Perhaps you misunderstood my
12 question. I asked, if you considered it an
13 imprudent -- that is, an unwise transaction --
14 and I understood you to say, yes, you did
15 consider it unwise. Perhaps you misunderstood
16 me.

17
18 A. I did.

19
20 Q. Yes. Do you say that you considered
21 it to be a wise transaction for Hugo (Berlin)?

22
23 A. To be a profitable transaction.

24
25 Q. Did you discuss this matter with
26 your fellow directors, Mr. von Rheden and others?

27
28 A. Again, I don't recall if I did,
29 or I didn't.

30
31 Q. You told me before lunch, Mr.
32 Tramiel, that you could not recall whether you
33 had discussed personally this transaction with
34 Mr. Wirth, although you were inclined to think
35 that you had and that it was on the telephone.
36 Did you not tell me that?

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38 A. I was not I believe specific,
39 knowing exactly how I told him.

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41 Q. Yes?

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J. Tramiel

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A. Seems now, that if I was there during the period of time I must have told him personally.

Q. Did you show them a copy of the contract which you had with you, Hugo Oppenheimbank, so that they would appreciate precisely the terms of this transaction?

A. I don't think so. I don't think that we had a contract, I have a contract then in my possession.

Q. I don't recall the date of that contract which is before you.

A. The 11th of June.

Q. Yes. Looking at Exhibit 997.1, this contract made between Hugo Oppenheimbank (Canada) Limited and yourself and Mr. Kapp, bears date the 11th of June, does it not?

A. Yes.

Q. Was this prepared by Canadian solicitors?

A. Yes.

Q. Was it signed by you on the 11th of June?

A. It couldn't have been.

Q. When did you consider that that document was signed?

A. It must have been signed by me before or after I came back from Germany.

J. Tramiel

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3 Q. Can you assist us as to whether
4 it was before or after?

5 A. No. I cannot, sir.

6 Q. And just leaving this point, Mr.
7 Tramiel, is it quite clear that you are saying
8 that the consent of Hugo (Berlin) which is before
9 you and is marked as Exhibit 997.2, purporting
10 to be signed by Mr. Wirth and Mr. Lange, was
11 signed by them and delivered to you on or
12 before the 11th of June, 1965, in Berlin?

13 A. When I have said I have seen it
14 signed, if it was delivered to me or not, I
15 don't recall.

16 Q. I understand it is possible that
17 it was signed, but not given to you on the 11th
18 of June?

19 A. I don't recall having this document
20 with me, the exact date.

21 Q. Do you recall having the document
22 with you when you returned from Germany on that
23 occasion?

24 A. This is what I meant. That I did
25 not recall having the document with me when I
26 returned.

27 Q. When do you recall the earliest
28 time at which you had possession of that document?

29 A. Today.

30 THE COMMISSIONER: Q. Today?

J. Tramiel

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A. Yes.

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Q. Yes, well, what do you mean?

4

A. I have seen it.

5

Q. Is today the first time you have

6

ever seen it?

7

A. I have seen it when it was signed,

8

sir.

9

Q. Yes, and you haven't seen it since,

10

until today?

11

A. That is right.

12

MR. SHEPHERD: Q. Why?

13

A. I don't know why. I just don't

14

recall seeing it. To me it was signed, it was

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complete.

16

Q. Do we now have the full account

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which you are able to give of the execution and

18

delivery of that consent?

19

A. Yes.

20

MR. SHEPHERD: Could I have Exhibit 3426,

21

please?

22

Q. Did you after the collapse of Atlantic,

23

attend in Berlin and there negotiate an agreement

24

which had the effect generally of surrendering

25

to the bank these shares which had stood in your

26

name in return for the surrender by the bank of

27

Canadian securities which Hugo (Berlin) owned?

28

A. Mr. Shepherd, when I have realized

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of the collapse of Atlantic, what happened, the

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J. Tramiel

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circumstances what happened, immediately, and there was one particular dealing which made me do this to a certain extent, was after June 14th or 17th, Mr. Morgan called me and he asked me to release the receivables from Analogue Controls to Analogue Controls from Trans Commercial.

Q. I don't think I entirely understand that, Mr. Tramiel. Could you explain that more clearly?

A. Mr. Morgan called me.

Q. Yes?

A. He told me that he would like the Trans -- that Trans Commercial should give a letter to Analogue Controls that they are giving up the security what they are holding, which is receivables from Analogue Controls.

Q. I see. Yes?

A. So that they can go to the bank and borrow money.

Q. Yes?

A. I told Mr. Morgan, this was after the collapse, that the way I understood Mr. Morgan told me that he is working very closely with the Montreal Trust and what he is telling me is a good thing for this whole problem.

Q. Yes?

A. At that time, I didn't want to do anything without asking our lawyers and I was

J. Tramiel

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2 advised because it looks to me strange that I
3 should get a release from the Montreal Trust.

4 Q. Yes?

5 A. Mr. Morgan told me he will get
6 this release, but after a day he did not. He
7 put all pressure he possibly could that I should
8 do this.

9 Q. Yes?

10 A. This showed me that Mr. Morgan was
11 out there to do things for his own benefit. I
12 couldn't figure out what benefit he was working
13 on, but I felt at that time, I better straighten
14 out some of the things I was involved with Mr.
15 Morgan.

16 Q. Yes?

17 A. And get the security back as fast
18 as I can to the hands of the Clarkson Company,
19 because I cannot rely any more on Morgan's
20 judgment.

21 Q. Yes?

22 A. I went to Germany. I know I get
23 a call from Mr. Wirth that the bank, a German
24 bank, I believe the capital has depleted more
25 than 50 per cent. The bank has to be closed.
26 He advised me this on the telephone. I went
27 to Germany and we have arranged that I have
28 taken back everything what we have given the bank
29 for the shares of the bank and we have returned
30

J. Tramiel

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3 the bank's shares to the bank and they went
4 back to the same status as they were before.

5 Q. Yes. At this time, did Mr. Wirth
6 know that Hugo Oppenheimbank had sold 75,000
7 shares to you and Mr. Kapp, on the terms to which
8 he consented in that consent dated 11th June, 1965?

9 A. Again, Mr. Shepherd, to give you
10 a "yes" or "no" answer, I couldn't.

11 Q. May I take it then, that notwith-
12 standing that Mr. Wirth and Mr. Lange executed
13 that consent in your presence on the 11th of
14 June, 1965, you considered that it may be that
15 they didn't know that Hugo Oppenheimbank (Canada)
16 had sold the 75,000 shares of Atlantic Acceptance
17 to you and Mr. Kapp on the terms of the agreement
18 bearing the date of the 10th of June, 1965?

19 A. The way I understand the question,
20 the way you put it to me, was if they knew exactly
21 the contract.

22 Q. Well, it is a good place to start,
23 Mr. Tramiel. Did they know the terms of the
24 contract?

25 A. The terms of the contract?

26 Q. Between yourself and Mr. Kapp and
27 Hugo Oppenheimbank (Canada)?

28 A. I told them when this was signed,
29 to the best of my knowledge, my answer to you
30 is I don't recall showing them the contract after-

J. Tramiel

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wards when it was signed.

Q. Yes. But, you did tell them the terms on which you were buying these shares for. Is that correct?

A. I believe I did.

Q. And did they know then, let us say by the end of June, that Hugo Oppenheimbank (Canada) Limited had sold 75,000 shares of Atlantic to you and Mr. Kapp?

A. At that time, Mr. Shepherd, I didn't believe it was important any more for them to question it or for me to tell them.

Q. But whether it was important or not, did they know it?

A. I believe they did.

Q. Then, did they know it because presumably you told them on the 11th of June, when you described the terms of the contract, that Hugo Oppenheimbank (Canada) was selling to you and Mr. Kapp 75,000 shares of AtlanticAcceptance? Is that correct?

A. Yes.

Q. Yes. Then I show you Exhibit 3426, this being an agreement made between yourself and Hugo Oppenheim German bank, signed on behalf of yourself, of course, with your own signature, signed by Mr. Wirth and Mr. Lange, bearing a date of the 1st of July, 1965. Do you

J. Tramiel

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3 recall signing that agreement? That is, the
4 German text, Exhibit 3426.

5 A. Yes.

6 Q. And I show you a translation of
7 that document which forms part of Exhibit 3426,
8 and I would like to direct your attention to
9 one portion of this document in Article 3, section 2,
10 it recites: That the party of the second part,
11 which is the bank, will transfer unto the
12 contracting party of the first part, which is
13 yourself, right and title to the following stocks
14 in the event of an agreement to purchase and
15 sell. Then there is a list of a number of
16 stocks, No.6 being 111,900 only, A.C.C. shares,
17 located at Oppenheimbank (Canada) Limited. Is
18 that correct?

19 A. Yes.

20 Q. Does the German text say sub-
21 stantially the same thing under No.6?

22 A. Yes.

23 Q. Why do Mr. Wirth and Mr. Lange on
24 the 1st of July, 1965, enter into an agreement
25 citing that a hundred and eleven thousand shares
26 of Atlantic Acceptance Corporation, which I
27 take to be what is meant by "A.C.C.", 111,900,
28 are located at the Oppenheimbank (Canada) Limited,
29 if they well know that 75,000 of those shares
30 have been sold to you and Mr. Kapp?

J. Tramiel

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3 A. Mr. Shepherd, I can only answer
4 you as far as they were concerned, those shares
5 were here in Canada, and I just put it that way.
6 This was ---

7 Q. I am sorry, I didn't hear the last
8 part of your answer.

9 A. They just put it into -- in the
10 contract that way, because those shares in their
11 opinion, in my opinion, were the property of
12 Hugo Oppenheim, they have transferred them to
13 Hugo Oppenheim instead of making a distinction.
14 If they were sold to me or they were given to
15 me on option, they just put it together at one
16 sum. I didn't see the importance of it. At
17 that time, my most importance was to be able to
18 bring those securities back and turn it over
19 to the Clarkson Company, and to save as much
20 money as I can, because at that time I found out
21 I am a trustee for a receiver. How it was
22 worded personally, I didn't care.

23 Q. Did it not trouble you then, that
24 this contract states that these shares are located
25 at the Oppenheimbank (Canada) Limited, when you
26 have asserted that Mr. Wirth and Mr. Lange well
27 knew that they were not located at the Hugo
28 Oppenheimbank (Canada) Limited, they had been sold
29 to you?

30 A. At that time, I did not -- I did not

J. Tramiel

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look at this the way you are putting it, Mr.

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Shepherd. As long as I felt I would have

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control over those shares and be able to advise

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the Clarkson Company exactly where they are, to

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me, was more important than to dicker with the

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German people, how it is written.

9

Q. You will appreciate, Mr. Tramiel,

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the difficulty one faces in looking at that

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language without some further explanation. That

12

it is capable of the interpretation that the

13

bank thought that Hugo Oppenheimbank (Canada)

14

Limited, still had possession of the shares, which

15

is contrary to what you have said.

16

A. There is no difference for the

17

German bank who owned it, Mr. Shepherd, because

18

they turned it over to me for the bank stock.

19

Didn't make any difference to them who owned it.

20

Q. Well, is that your full explanation

21

of their statement that these shares are at

22

the Hugo Oppenheimbank (Canada) Limited?

23

A. Yes.

24

Q. Would you look at Article 1,

25

paragraph 2. I will read the last sentence.

26

I will read the paragraph in the translation.

27

Perhaps you would follow it in the German text

28

of Exhibit 3426:

29

"The contracting party of the first

30

"part" --

J. Tramiel

11899

That is yourself, Mr. Tramiel.

" -- is a shareholder of the contracting
"party of the second part."

Which is the bank.

"He owns shares in the nominal value

"of D.M. 8,127,500 (Eight Million,

"One Hundred and Twenty-Seven Thousand,

"Five Hundred German Marks). He assures

"that these shares are his freely

"disposable and unrestricted property,

"totally unencumbered by rights in

"favour of third parties."

(Page 11900 follows)

J. TRAMIEL.

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Is that substantially an accurate translation of the German text?

4

A. Yes, sir.

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Q. Did you consider that those shares were your freely disposable and unrestricted property, totally unencumbered by rights in favour of third parties?

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A. Mr. Shepherd, I have made this clear a number of times who the shares belonged to. I have also made it clear just a minute ago, that I went over there to get the security back.

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Q. Now, if you would take the trouble to make it clear to me why you didn't make it clear to the Hugo Oppenheimbank, that these shares were not your freely disposable and unrestricted property in the light of what you have said here to-day?

19

20

21

A. The only reason if I would have at that time, is to sign as an officer of Evermac, I couldn't have completed the transaction.

22

23

24

25

Q. Mr. Tramiel, why go to the trouble in the contract of stating that which is not correct, or which you say is not correct, that these shares are your property?

26

27

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A. Because my interest was -- get these shares back as fast as I can -- because, they were not -- Mr. Morgan at that time had no jurisdiction over them and my job was in my opinion, at that time, to turn them over as fast

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as I can to the Clarkson Company.

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Q. Had you given a guarantee to this bank when you first acquired an interest in it about the value of Canadian securities in which the bank would invest?

7

8

A. No. No, not Canadian securities. I gave it a guarantee.

9

10

11

Q. What guarantee had you given it?

A. I was asked at one point of the matters -- what I think of the Atlantic stock.

12

13

14

15

Q. Yes?

A. I told them I think about it the same way like Canada bonds and if you want my personal guarantee, I will guarantee it.

16

17

Q. About when did this discussion take place?

18

19

A. Before they bought the Atlantic shares.

20

21

22

23

Q. Yes, and did you then execute a document extending to Hugo Oppenheim (Berlin) your guarantee of the value of the Atlantic shares?

24

25

26

A. I believe I did.

Q. You were personally liable, I suppose, on that guarantee, having executed it?

27

28

29

30

A. It could have been, yes.

Q. Then, when you returned to Germany and gave up your interest in the shares of

Hugo Oppenheim (Berlin) and took back the

11902

J. TRAMIEL

securities consisting of Atlantic Acceptance shares and Commodore Business Machines securities of the Berlin bank, did you do so so that you would be freed of your personal obligation to the bank to make good on the guarantee?

A. Not at all.

Q. Were you freed of your personal obligation to the bank to make good on the guarantee?

A. Yes.

Q. Do you say that that was simply a side effect and was not the motive for the transaction?

A. That is right.

Q. Do you say your motive in the transaction was to get these securities, Commodore Business Machines securities and Atlantic Acceptance shares, back for the benefit of the Clarkson Company?

A. Yes, sir.

Q. If you had not entered into this transaction, what would have been the extent of your personal liability in dollars to the bank on this personal guarantee, approximately?

A. Whatever the deal was. I believe \$2,000,000.

MR. SHEPHERD: Yes. You have 989.1, please?

Q. I show you Exhibit 989.1, a Declaration of Trust. Indeed, I see it is

11903

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J. TRAMIEL.

2

three copies of a Declaration of Trust, which I
3 believe I undertook to show you the last time
4 you testified. Is that your signature?

5

A. Yes, it is.

6

Q. Is this the document to which you
7 made reference when you said that you had
8 executed a Declaration of Trust, saying that
9 you held the Oppenheim (Berlin) shares in trust
10 for Evermac Office Equipment Company Limited?

11

A. I believe this is the one, yes.

12

Q. It reads:

13

"IN WITNESS WHEREOF I have hereunto set

14

"my hand and seal this 16th day of

15

"February, 1965."

16

Can you state when that document was signed?

17

A. The date is the 16th of February,
18 and I believe it was signed on the 16th of
19 February.

20

Q. Where was it signed?

21

A. In Toronto.

22

Q. But, whereabouts in Toronto? Would
23 it be at the offices of Solomon & Singer?

24

A. I was trying to say.

25

Q. Sorry.

26

A. Usually they were being prepared
27 by the solicitors, so they must have been signed
28 there.

29

Q. Do you recall that that was signed

30

in the offices of Solomon & Singer?

J. TRAMIEL

1
2 A. This is the only place I would sign
3 a document like this.

4 Q. Which solicitor did you deal with
5 at Solomon & Singer?

6 A. With any one which was available,
7 sir.

8 Q. Well, that would be Mr. Solomon and
9 Mr. Singer, of course. Was there anyone else
10 over there with whom you ever dealt?

11 A. Mr. Solway, there was some dealings
12 I had with him.

13 Q. I see. Why were you so concerned
14 to get these securities back to the Clarkson
15 Company and not concerned with your personal
16 guarantee for \$2,000,000?

17 A. Because I have seen the way the
18 Clarkson Company works as a receiver, and I felt
19 if the receiver would be appointed in the bank
20 it will happen the same thing, that there will
21 be more expenses than assets.

22 Q. Was your concern for the creditors
23 for whom Clarkson were appearing?

24 A. I don't follow you there, sir.

25 Q. I am concerned that you have said
26 you were not motivated by a desire to relieve
27 yourself of a personal liability under the
28 guarantee, but you were motivated by the desire
29 to get these assets, the Canadian securities, back
30 in the hands of the Clarkson Company. For whose

J. TRAMIEL

11904-A

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benefit were you working at that time?

A. For the benefit of the receiver
for Atlantic Acceptance.

Q. Yes?

A. I am saying receiver, I am saying
the Clarkson Company, because at that time, I
believe the Clarkson Company was representing
Atlantic Acceptance and all other companies too.
Aurora and everybody else.

(Page 11904-B follows)

J. Tramiel

11904-B

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Q. If you made good on your personal guarantee which you have mentioned, fixed at \$2 million, to the bank, and if those shares were in fact owned by Evermac, which in turn owed \$2 million to Aurora, would that not have benefitted the receiver and the creditors more clearly than did the exchange of shares for assets?

A. But, Mr. Shepherd, you are saying -- I didn't have \$2 million, because the way you are putting the question to me -- I didn't have \$2 million, so I couldn't pay it.

Q. But probably you could have paid some part of it, Mr. Tramiel?

A. At that time, I couldn't pay anything, because whatever I had was lost.

Q. You now have, do you not -- perhaps you could answer this yes or no -- a substantial interest in Commodore Business Machines (Canada) Limited, or at all events, a right to acquire a substantial interest in Commodore Business Machines?

A. Well, there is a big difference in the question the way you put it. If you ask me -- if I have an interest in Commodore Business Machines -- I have a very small interest.

Q. Well, Mr. Tramiel, I don't particularly want, necessarily want, to go into

J. Tramiel

11904-C

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3 events following the collapse of the Atlantic,
4 but I am prepared to do so if need be, subject
5 to the Commissioner's direction.
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(Page 11905 follows)

BB/FTP/1

J. Tramiel

11905

1
2 Do you agree that notwithstanding the
3 collapse of Atlantic Acceptance Corporation you
4 have shares of Commodore Business Machines
5 (Canada) Limited and also a right to acquire
6 substantial numbers of shares of Commodore
7 Business Machines (Canada) Limited, and that
8 you have not been ruined as I thought you were
9 perhaps suggesting before?

10 A. On June 14th or 17th, the day
11 when I have signed this document, I did not have
12 any options, and I held a very small amount of
13 shares, which I call less than 1,000 Commodore
14 shares.

15 In September some time, or October, I did
16 receive an option to buy a substantial amount of
17 Commodore shares, and I do have this option
18 to-day.

19 Q. Did you, at a meeting of the
20 directors of Commodore Business Machines on or
21 about 5th July, 1965, after the collapse of
22 Atlantic, have approved a contract of employment
23 by Commodore Business Machines with yourself,
24 whereby that company was obliged, for a period
25 of five years, to pay you \$30,000 per year?

26 A. I had a contract of employment, I
27 believe, before for \$25,000. This was an
28 increase of \$5,000 a year.

29 Q. Was the contract of employment prior
30 to this time in the minute book?

J. Tramiel

11906

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A. I believe it was.

3

Q. Why did you enter into a new contract for a new period of five years, three weeks after the collapse of Atlantic?

6

A. Because I asked the board of directors, and I needed money and I was in trouble.

8

Q. And at the same meeting, did the board authorize an employment contract with Mr. Kapp for five years for \$25,000 a year?

11

A. I believe they did, and also for some other employees of ours, of the company.

13

Q. But you have not in the minutes?

14

A. I am sorry, this is subsidiaries, I am sorry.

16

Q. Prior to the collapse of Atlantic, apart from the salary you drew from Commodore Business Machines (Canada) Limited, did you draw a salary from Commodore Business Machines Incorporated?

21

A. No, I did not.

22

Q. At any time?

23

A. I moved on May 18th -- I am sorry, March 18th, 1965, to Canada.

25

Q. Yes?

26

A. I am not sure of the exact date.

27

When I was living in the United States, my pay

28

came from Commodore Business Machines Incorporated or Inc.

30

Q. Yes?

J. Tramiel

11907

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2 A. My pay at that time was \$25,000
3 U.S. money.

4 Q. Yes?

5 A. When I came here and my pay came
6 from the Canadian Corporation, was \$25,000
7 Canadian, which was less than the amount that
8 I am receiving in the United States, but I did
9 not check into it. After the collapse, because
10 I had quite a number of loans to pay back, I
11 have asked for this increase. The increase
12 was only -- not \$5,000 because my pay was
13 really \$27,000 something.

14 Q. Do you say that in the aggregate
15 from all companies in the Commodore Business
16 Machines group, your pay prior to 18th March,
17 let us say prior to 1st March, 1965, was
18 \$25,000 U.S.?

19 A. Yes, sir.

20 Q. And do you say that you had an
21 employment contract with Commodore Business
22 Machines (Canada) Limited?

23 A. I believe so.

24 Q. For what term?

25 A. I believe it was five years.

26 Q. Starting when?

27 A. I believe it started in 1963.

28 Q. How would you have an employment
29 contract with Commodore Business Machines (Canada)
30 Limited if you were paid by the American Company?

J. Tramiel

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A. Because I was president of the parent company and who paid me, and I worked in United States; so if I would be transferred to-day into another country I would get paid there, because I was performing the services for that particular company.

Q. Then you say there really was no difference in your contractual arrangements, other than that you had been paid \$25,000 American dollars and you simply wanted to get a like sum once you moved to Canada?

A. No, I asked for an increase.

Q. And this is 5th July, 1965, is it not? You nodded "yes"?

A. I believe that date is correct.

HIS LORDSHIP: We will take fifteen minutes.

---A short recess.

MR. SHEPHERD: Q. Mr. Tramiel, you have stated in evidence that you and Mr. Kapp pledged with Traders Realty Limited in connection with the loan made to finance the purchase of Wilson Stationers 75,000 common shares of Atlantic Acceptance Corporation Limited.

I show you a photocopy of Certificate No. C7057 for 75,000 shares of Atlantic Acceptance Corporation Limited, registered in the name of Hugo Oppenheimbank (Canada)Limited, bearing date the 14th June, 1965, to which is affixed an

J. Tramiel

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assignment and transfer form reciting that Hugo Oppenheimbank (Canada) Limited has transferred these 75,000 shares of Atlantic Acceptance Corporation Limited to an assignee, the space being left blank, and signed on behalf of Hugo Oppenheimbank (Canada) Limited by yourself and Mr. F.S. Draper, the secretary of that company; further containing and setting out what I take to be a guarantee of signature by the Bank of Nova Scotia, per an assistant manager whose signature I cannot decipher.

Is that an accurate copy of the share certificate pledged by yourself and Mr. Kapp with Traders Realty Limited in connection with this matter?

A. Yes, sir.

Q. And is it correct that you have the original share certificate which you brought down, and this is a photocopy of that original?

A. Yes, sir.

MR. SHEPHERD: I offer this in evidence, Mr. Commissioner.

THE COMMISSIONER: That will be Exhibit 3639.

---EXHIBIT NO. 3639: Photocopy of share certificate No. C7057 for 75,000 shares of Atlantic Acceptance with assignment attached.

MR. SHEPHERD: Q. Is there any other

J. Tramiel

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transaction with which you would like me to deal,

3

or is there any matter you would like to raise

4

which we could discuss together?

5

A. No, sir.

6

MR. SHEPHERD: I think, Mr. Commissioner,

7

subject to some unforeseen circumstances whereby

8

Mr. Tramiel might be recalled, that that is all

9

I have to ask him at this time.

10

THE COMMISSIONER: Thank you, Mr. Tramiel.

11

A. Thank you.

12

THE COMMISSIONER: Mr. Pomerant.

13

---The witness retired.

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THE COMMISSIONER: Mr. Kapp.

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M. Kapp

11911

MANFRED KAPP, sworn.

THE COMMISSIONER: You appear for Mr. Kapp
also, Mr. Pomerant?

MR. POMERANT: I do, Mr. Commissioner.

THE COMMISSIONER: Thank you.

EXAMINATION BY MR. SHEPHERD:

Q. What is your full name, Mr. Kapp?

A. My name is Manfred Kapp.

Q. K-a-p-p?

A. Yes, sir.

Q. When and where were you born?

A. I was born in Germany, December 17,
1928.

Q. Where did you live thereafter?

A. I lived in Germany until 1933, and
then I moved to France. In 1947 I moved to the
United States.

Q. In what place in Germany were you
born?

A. Luneburg.

THE COMMISSIONER: Where?

A. Luneburg.

MR. SHEPHERD: Q. What education have you,
Mr. Kapp?

A. I have public school and junior high
school.

Q. What is your citizenship now?

M. Kapp

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A. United States.

Q. When you emigrated to the United States in 1947, what did you do?

A. I went to work.

Q. Where?

A. A typewriter place.

Q. What company was it?

A. Typewriter company called Fisher Typewriter Company.

Q. And what was the nature of your duties? Were you a repairman?

A. Typewriter repair man.

Q. What was your business career, employment career thereafter?

A. I worked for this company for about a week, and then I went to work for ACE Typewriter Repair Company. I worked there until 1950.

Q. Yes?

A. I was in the U.S. Army for about two years, and I went back to work for ACE Typewriter.

Q. During your service in the American Army, were you again engaged in the field of typewriter repair?

A. No, sir, I was not. I was in the ordnance field.

Q. When did you first meet Mr. Tramiel?

A. I believe it was about 1951 when I was in furlough in New York.

Q. And where was Mr. Tramiel then that

M. Kapp

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you came to meet him?

A. I believe he was working for ACE
Typewriter at that time.

Q. Then on your discharge from the
Army, did you return to work for ACE Typewriter
Company?

A. Yes, sir.

Q. How long did you remain then?

A. Until 1954.

Q. What did you do then?

A. Then I went into business with Mr.
Tramiel, partnership.

Q. Is this the business -- Mr. Tramiel
told us about a retail store called Singer
Typewriter, selling reconditioned typewriters.

MR. POMERANT: Mr. Commissioner, Mr. Kapp
has instructed me that he objects to answer this
question on the ground that his answer might
tend to incriminate him or may tend to establish
his liability to a civil proceeding at the
instance of the Crown or of any person, or to
prosecution under any Act of a Provincial
Legislature.

Mr. Kapp invokes Section 5 of The Canada
Evidence Act, Section 9 of The Ontario Evidence
Act, and any other relevant sections of any other
Provincial Acts of evidence.

So as not to interfere with the examina-
tion of Mr. Kapp and because all the questions

M. Kapp

11914

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2 at this examination would require answers by Mr.
3 Kapp that might incriminate him or tend to
4 establish his liability to a civil proceeding
5 at the instance of the Crown or of any person
6 or to prosecution under any Act of the Provincial
7 Legislature, may it be accepted that Mr. Kapp
8 objects and is deemed to object to answer every
9 question at this examination, on the ground
10 that his answers may tend to incriminate him or
11 tend to establish his liability to civil
12 proceeding at the instance of the Crown or of
13 any person, or to prosecution under any Act
14 of the Legislature, and that Mr. Kapp is deemed
15 to claim the protection of Section 5 of The
16 Canada Evidence Act, Section 9 of The Ontario
17 Evidence Act and any other relevant Provincial
18 Acts of evidence; and may it be admitted, Mr.
19 Commissioner, that by the use of the word
20 "examination" at this stage, that this would
21 refer to every question asked at any stage
22 where Mr. Kapp would be required to give evidence
23 before you, sir?

24 THE COMMISSIONER: Yes, it may, Mr.
25 Pomerant, and pursuant to the provisions of
26 those sections the witness is directed to
27 answer them.

28 I think the last question that was put
29 to you by counsel was whether this partnership
30 business with Mr. Tramiel was known as Singer

M. Kapp

11915

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2 Typewriter Company.

3 A. Yes, sir, it was.

4 MR. SHEPHERD: Q. Were you present in
5 the hearing room in this Commission, Mr. Kapp,
6 when Mr. Tramiel gave evidence relating to the
7 early days of your association, in the course
8 of which he mentioned the incorporation of a
9 company called Everest Office Machines (Canada)
10 Limited and other like matters?

11 A. Yes, sir, I was.

12 Q. And can you state whether you have
13 anything to add or to alter in connection with
14 Mr. Tramiel's description of the history of
15 your partnership and joint business ventures
16 up to but not including the time when you
17 incorporated Commodore Portable Typewriter Company
18 Limited?

19 A. No, I have nothing special to add.

20 Q. When did you come to Canada yourself,
21 to live I mean?

22 A. 1956.

23 Q. And what were the circumstances
24 which compelled you to move?

25 A. Well, Mr. Tramiel had come to
26 Canada in 1955 and had started the company as
27 he has described.

28 Q. That is Everest?

29 A. Everest, yes.

30 Q. Yes?

M. Kapp

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A. And I was still working in New York taking care of Singer Typewriter, and in 1956 decided to sell Singer Typewriter and I moved to Canada.

Q. Did you thereafter concern yourself with the operations of Everest Office Machines and the other company to which Mr. Tramiel made reference, which I think was Wholesale Distributors?

A. Wholesale Typewriter Company.

Q. Is it possible to state in general terms how you and Mr. Tramiel divided the work required to be done in your various common ventures?

A. Well, essentially Mr. Tramiel was doing the selling, seeing customers, and I was essentially taking care of the internal operation, bookkeeping, work inside, even though there was a certain overlapping of functions.

Q. Have you had any formal training as an accountant?

A. No, sir, I didn't.

Q. I am sure that you must have had a good deal of practical experience. Could you describe in a general way how it was that you came to be skilled in this field?

A. Well, I acquired some practical experience in the Army when I worked in ordnance. I was connected, working in the office mainly.

This is where I acquired some bookkeeping

M. Kapp

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experience.

Q. Under what circumstances did
Commodore Portable Typewriter Company Limited
come to be formed? Perhaps I could remind you
that Mr. Tramiel testified that you, or perhaps
Mr. Tramiel, had made a connection with a
supplier of new typewriter machines in
Czechoslovakia, and these machines were dealt
in by you thereafter?

A. Yes, that is correct.

Q. Now, with that background, could
you describe the reason for incorporating
Commodore Portable Typewriters?

A. Well, if I recall, it was at the
time when we had some difficulty with the people
in New York.

Q. Is that Type Sales?

A. Type Sales, yes, sir, and if I
recall, they didn't want to come into the
distribution of this new portable typewriter
and expand on it, and they were primarily
interested in the used machines because they
had that contract with IBM in the States and
this is what they wanted to pursue and do.

Q. At that time Type Sales had an
interest, did it not, in Everest Office Machines?

A. Yes, it did.

Q. Did Everest Office Machines (later
Evermac) encounter financial difficulties at

M. Kapp

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about this time? 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

3

A. Yes, it did.

4

Q. And ultimately did the company
become dormant?

6

A. It did become dormant.

7

Q. The evidence before the Commission
has been to the effect that Commodore Portable
Typewriters was incorporated on 10th October,
1958, but, as appeared by a financial statement
which I put to Mr. Tramiel during your presence
in the hearing room, there was some reason to
think that the company did not go into the
business of selling until February, 1959. Can
you assist us as to when Commodore Portable
Typewriters commenced operations?

17

A. Well, my recollection is also a
little bit vague. I must rely on the statement
that you have submitted, that the company
probably only went in actively in 1959.

21

THE COMMISSIONER: I am having a little
difficulty in hearing you, Mr. Kapp. If you
will just keep your voice up.

24

A. Yes.

25

Q. It would be easier.

26

A. Yes, sir.

27

MR. SHEPHERD: Q. Would you describe the
circumstances which led to your first meeting
with Mr. Morgan? Perhaps you could begin with
the first contact you had with Mr. Annett.

M. Kapp

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A. Well, the first time I have met Mr. Morgan was when he came to our office with a Mr. Rooney. I believe it is A.C. Rooney.

Q. Mr. Tramiel testified that through the agency of one Hall, he (Mr. Tramiel) met Mr. Annett, Mr. Douglas Annett, seeking a source from which Commodore Portable Typewriters might be able to borrow money; because Interprovincial Discount which had been the company financing Everest (later Evermac) was not able to give to Commodore Portable Typewriters financing to the extent that Mr. Tramiel envisaged Commodore Portable Typewriters would require. Did you have any part in the discussions with Mr. Annett?

A. No, I didn't have any part in the discussions.

Q. Then when Mr. Morgan came to Commodore Portable Typewriters with Mr. Rooney, what occurred on that occasion?

A. Well, the two gentlemen wanted to know about the company, what we were doing, how we were financing, took a quick look at the books and probably stayed there for maybe a couple of hours asking questions about the business.

Q. I suppose you had already learned from Mr. Tramiel that there was a possibility that such a visit might be made, because Mr. Morgan had indicated some interest in the financing?

Mr. Kapp

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A. Yes, I was aware of the discussions
and I knew ---

Q. I am sorry, Mr. Kapp, I did not
hear you.

A. I was aware of the discussions, and
I knew that Mr. Morgan was coming over.

Q. Then what is the next occasion on
which you met Mr. Morgan?

A. I think the next occasion I met him
is at the time of the meeting at the Bank of
Nova Scotia that Mr. Tramiel referred to.

Q. When did you first learn that there
was a company to be formed which became known
as Commodore Sales Acceptance, and that a 25
per cent interest in that company would be made
available to be purchased by Commodore Portable
Typewriters or by such persons as Commodore
Portable Typewriters might designate?

A. This must be some time after Mr.
Morgan visited at our office.

(Page 11925 follows)

M. Kapp

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Q. I take it, then, you did learn it from Mr. Tramiel; is that correct?

A. Yes.

Q. Was the meeting at the Bank of Nova Scotia the occasion on which you first met Mr. Annett?

A. Oh, no, I had met Mr. Annett before.

Q. Under what circumstances had you met him?

A. I had been up there with Mr. Tramiel on some occasions.

Q. In connection with the discussions which Mr. Tramiel described leading to a source of funds?

A. That is correct.

Q. And what had Mr. Annett said as to the possibility of funds being found?

A. Well, in these discussions Annett wanted to know about the company, just general discussion, see what could be done for the company.

Q. Yes. When did you first learn that Commodore Portable Typewriters was to be allowed to participate to the extent of 25 per cent?

A. As best I told you some time after Mr. Morgan had been there in discussions

M. Kapp

11926

1
2 with Mr. Tramiel.

3 Q. Commodore Portable Typewriters,
4 according to the evidence we have heard,
5 purchased a note of Commodore Sales
6 Acceptance for \$25,000, and borrowed the
7 money to enable this to be done from
8 Commodore Sales Acceptance; is that in
9 accordance with your recollection of what
10 happened?

11 A. Yes, sir, it is.

12 Q. Did you consider that an unusual
13 transaction?

14 A. Well, it is unusual. At the
15 time I understood we didn't have the money,
16 but I understand what these people would want
17 to loan us the money to take part in the
18 company, and I didn't question it.

19 Q. The nature of the transaction,
20 Mr. Kapp, you will appreciate that Commodore
21 Sales was lending \$25,000 to Commodore Portable
22 Typewriters so Commodore Portable Typewriters
23 made the loan of \$25,000 to Commodore Sales
24 Acceptance. Do you consider that unusual?

25 A. Well, we did give security to
26 Commodore Sales Acceptance, and I think there
27 was two distinct transactions. Commodore
28 Sales Acceptance went into the business of
29 lending money, and we give them security
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M. Kapp

11927

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and we received money from them.

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Q. In the form of assigning your
receivables, and the like; is that correct?

5

A. Yes.

6

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Q. And they loaned money against
your receivables, that was the general
purpose of the transaction, was it not?

9

A. Yes.

10

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14

Q. And the security for this
particular \$25,000 loan, for the purpose of
enabling the money to be loaned back again
was their note of Commodore Sales Acceptance
itself, was it not?

15

16

A. Could you ask that question
again?

17

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22

Q. When Commodore Portable
Typewriters borrowed \$25,000 from Commodore
Sales Acceptance and then paid the money back
to Commodore Sales Acceptance it obtained,
I put it to you, a note of Commodore Sales
Acceptance?

23

A. Yes.

24

25

Q. And that note was a security
for that particular loan?

26

A. Not to my recollection, sir.

27

28

29

Q. What security did you consider
Commodore Sales Acceptance had for that
advance?

30

M. Kapp

11928

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2 A. Well, for the advance of
3 \$65,000 we received at that particular time,
4 we have given Commodore Sales Acceptance
5 a security of receivable, of inventory, and
6 the note had nothing to do with the loan.

7 Q. Then, Mr. Kapp, Commodore
8 Portable Typewriters got possession of the
9 note?

10 A. I don't recall they would. It
11 is possible we did, maybe not.

12 Q. I think Mr. Tramiel testified
13 according to his recollection you didn't get
14 the note, it remained over with Annetts or at
15 Commodore Sales Acceptance. In any event,
16 you didn't have it?

17 A. No, it is possible. Of course,
18 I have to state here I don't particularly
19 recollect the whole transaction. The only
20 reason I am able to answer you I did look it
21 up in the books of the company to refresh
22 my memory, but I don't recall all the exact
23 details.

24 Q. Now, everyone who advanced moneys
25 to Commodore Sales Acceptance was given, were
26 they not, the right to subscribe for shares
27 of Commodore Sales Acceptance in proportion
28 to the amount of money they had loaned?

29 A. That is right.
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M. Kapp

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Q. And since Commodore Portable Typewriters had advanced 25 per cent, Commodore Portable Typewriters was entitled to subscribe, was it not, for 1,000 shares at 10 cents per share, which was 25 per cent of the issued capital at that time?

A. Well, I can't answer you as to the amount of shares, I can answer you as to the percentages. It was my understanding we could subscribe to the percentage of loan advances, which at that time my understanding is was 25 per cent.

Q. Will you take it from me, for the facilitating of this examination, it was 1,000 shares out of 4,000 shares?

A. Yes.

Q. Those shares, according to the evidence we have heard, were held in the name of Annett and Company originally for the account of Mrs. Kapp and Mrs. Tramiel; does that agree with your recollection?

A. That is correct.

Q. Why did Annetts retain the shares?

A. Well, I couldn't answer you, Mr. Shepherd. I know the transaction was done through them at the time when we started to deal, and knowing the type of people we were dealing with we had full

M. Kapp

11930

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2 confidence in them, and we left the
3 transaction entirely to Mr. Morgan and
4 Mr. Annett.

5 Q. I suggest, Mr. Kapp, when this
6 transaction was being entered into Mr. Morgan
7 must have said something about why Commodore
8 Portable Typewriters was being allowed on
9 these terms to take a 25 per cent interest?
10 Did he say anything, and can you tell us what
11 he said?

12 A. No, he didn't say anything to
13 me, because I didn't have any discussions with
14 him.

15 Q. Other than the meeting at the
16 Bank of Nova Scotia, when was the next time
17 you saw Mr. Morgan?

18 A. After the Bank of Nova Scotia
19 meeting I have seen Mr. Morgan numerous times
20 during the years, and I couldn't tell you
21 exactly ---

22 Q. Mr. Wagman testified shortly
23 after the meeting at the Bank of Nova Scotia --
24 although I do not recall he said the number
25 of days or hours -- there was a meeting in
26 Mr. Morgan's office attended by yourself,
27 Mr. Tramiel, Mr. Wagman and Mr. Morgan, at
28 which was discussed the role which Commodore
29 Sales Acceptance was to play in the affairs of
30

M. Kapp

11931

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2 Commodore Portable Typewriters; do you recall
3 such a meeting?

4 A. Not offhand I specifically
5 recall this meeting.

6 Q. When did you first hear from
7 anyone that it was intended that the shares
8 of Commodore Sales Acceptance were to be
9 re-purchased? To assist you, Mr. Tramiel gave
10 evidence that some time not earlier than the
11 end of 1959, and not later than about March
12 of 1960, Mr. Morgan made some comment about
13 the purchase of these shares at a price of
14 \$6.00? Q.

15 A. Well, again, I am not too clear
16 in that particular period of time. I know
17 he called Mr. Tramiel sometimes telling him
18 that Mr. Morgan was re-purchasing the shares
19 and the note because they wanted to increase
20 the capitalization in Commodore Sales, and
21 we couldn't participate. I don't recollect
22 the exact time.

23 Q. The transaction actually occurred,
24 Mr. Kapp, in connection with which deliveries
25 took place to Netherlands Overseas Securities
26 in the month of February, 1961. Can you
27 assist us as to whether it was about that time
28 or substantially before that time that you
29 first were informed that Mr. Morgan was
30

M. Kapp

11932

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buying the shares and note?

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A. It was substantially, to my recollect, before that time.

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Q. Was it your understanding that he was saying that he would some time in the future buy the note and the shares, or was it your understanding that he was indicating that he bought them right then and there, let us say within early 1960, but that payment might be deferred?

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13

Commod A. You have to remember we didn't have the shares in our hands.

14

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Q. Yes?
A. I was told that he is buying them, and that was it. And the transaction came through actually substantially later. I think I was informed at the time by Mr. Wagman of the exact details of what took place.

20

21

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23

24

Q. Are you able to recollect, whether it is substantially in agreement with Mr. Tramiel's, it was early in 1960 that Mr. Morgan indicated that he was buying shares of \$6.00?

25

26

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A. It could have been about that time. I know it was substantially, because it took quite a while for the transaction to take place.

29

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Q. Were you afforded at Commodore

M. Kapp

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1
2 Portable Typewriters an opportunity from
3 time to time to subscribe for further shares
4 of Commodore Sales Acceptance in return for
5 lending additional moneys to that company?

6 A. Not to my knowledge.

7 Q. Would it be fair to say Commodore
8 Portable Typewriters would not at that point
9 have been able to avail itself of such an
10 opportunity in that it did not then have
11 moneys for the purpose of buying the notes of
12 Commodore Sales Acceptance?

13 A. That is correct.

14 Q. Then, state, if you will, everything
15 you can tell the Commission about the way in
16 which the transaction relating to the purchase
17 of the notes and shares of Commodore Sales
18 Acceptance was ultimately done?

19 A. You are interested in the sale.

20 As I recall, the transaction -- of course,
21 I verified this in the books of Commodore
22 Portable Typewriter to refresh my memory at
23 the dates -- took place on February 17, 1961.

24 Q. Yes?

25 A. Where we were credited firstly
26 \$25,000 into -- that Commodore Sales Acceptance,
27 into our loan account, that is Commodore
28 Portable Typewriter loan account for \$25,000
29 in consideration for the notes.

M. Kapp

11934

1
2 Q. \$25,000 The surrender of the \$25,000
3 note?

4 A. The \$25,000 note.

5 Q. Yes?

6 A. And a further \$25,000 for the
7 surrendering of the shares. And my
8 understanding is Mr. Morgan paid in the
9 \$25,000 for the shares, and I was then told
10 that the note was taken up by Netherlands
11 Overseas Corporation.

12 Q. Who told you at that time,
13 Mr. Kapp, of Mr. Morgan paying the money for
14 the shares and Netherland Overseas taking
15 the note?

16 A. Well, at that time I would have
17 been told by Mr. Wagman, because this type of
18 transaction after it was accomplished would
19 wind up in the hands of Mr. Wagman in Commodore
20 Sales.

21 Q. So, you say Mr. Wagman told you
22 that the note of Commodore Sales Acceptance
23 owing to Commodore Portable Typewriters was
24 being acquired by Netherlands Overseas; is that
25 correct?

26 A. That is correct.

27 Q. And the shares were being paid
28 for by Mr. Morgan, and that Commodore Portable
29 Typewriters would get a credit from Commodore
30

M. Kapp

11935

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2 Sales of \$25,000 in consideration of delivering
3 up shares; is that correct?

4 A. That is correct.

5 Q. Did you understand that
6 Netherlands Overseas was concerned with the
7 shares as well, or did you understand only
8 that they were concerned with the note?

9 A. Well, I understood they were
10 only concerned with the notes, because that
11 is what is reflected in our books, and would
12 be put in the books at the time what my
13 understanding was of the transaction.

14 special Q. What evidence did you require to
15 show, Mr. Kapp, that Commodore Sales Acceptance
16 had in fact credited Commodore Portable
17 Typewriters with \$50,000?

18 A. I didn't see -- or I didn't
19 believe I required that evidence because Mr.
20 Wagman told me they have credited us with this
21 amount, and this was sufficient for me. And
22 the entries accordingly were made in the books
23 of Commodore Portable Typewriter, and the accounts
24 were adjusted accordingly.

25 Q. Did Commodore Portable Typewriters
26 write to Commodore Sales Acceptance setting out
27 this arrangement and calling to the attention
28 of Commodore Sales Acceptance that Commodore
29 Portable Typewriters was reflecting in its books
30

M. Kapp

11936

1
2 a reduction of the loan made by Commodore
3 Sales Acceptance to Commodore Portable
4 Typewriters in the amount of \$50,000?

5 would A. We didn't, we didn't write a
6 letter. If I may add here, Mr. Shepherd,
7 I have taken the opportunity to look in
8 Commodore Sales Acceptance book, which is
9 Exhibit No. 954.

10 you, Q. Yes?

11 Overseas A. In cash receipt No. 118,
12 February 17, 1961, and they record a receipt
13 from C.P. Morgan for \$25,000, crediting the
14 special account C.P.T., which I take it would
15 be Commodore Portable Typewriters.

16 \$7.50 Q. Yes?

17 trans A. On the same date, February 17,
18 1961, received from Commodore Portable credit
19 to special account \$24,992.50, which is, of
20 course, what is reflected in our books. I also
21 understand, and since I have been informed by
22 Mr. Draper, that there is a cheque for
23 \$25,000 in existence from Netherlands Overseas
24 to Commodore Portable Typewriter which I have
25 never seen.

26 Q. Perhaps I could ---

27 A. But I presume it must have come
28 to Commodore Sales Acceptance, and that they --
29 at that time there was a collateral deposit
30

M. Kapp

11937

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2 account in existence, and they have probably
3 deposited to the account and the money
4 automatically went into their account, which
5 would account for why I have never seen the
6 cheque.

7 Q. I can undertake to show you the
8 cheque, Mr. Kapp, although I don't have it
9 immediately in front of me. But I put it to
10 you, the cheque in question is from Netherlands
11 Overseas payable to Commodore Portable
12 Typewriters in the amount you have described,
13 that is, being a few dollars less than
14 \$25,000 ---

15 A. If I can interrupt you,
16 \$7.50 was indicated in the books as some
17 transfer tax. That is the discrepancy of
18 the seven fifty.

19 Q. And that is endorsed as being
20 deposited to the account of Commodore Portable
21 Typewriters at the Bank of Nova Scotia?

22 A. Yes.

23 Q. Now, you say the receipt of that
24 cheque is in the books of Commodore Portable
25 Typewriters?

26 A. No, I said, Mr. Shepherd, we were
27 informed by Commodore Sales, and I presume
28 Mr. Wagman, that they had received this money
29 from Netherlands Overseas. I also said that
30

M. Kapp

11938

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2 Commodore Sales Acceptance had what we referred
3 to as a collateral account in the name of
4 Commodore Portable Typewriter. When we
5 borrowed money from Commodore Sales Acceptance
6 we would take all receivables. When the
7 customers cheques came in we would turn them
8 over to Commodore Sales Acceptance,
9 and they would deposit it in Commodore
10 Portable collateral account. And this
11 money was automatically transferred to
12 Commodore Sales. I had no control over that
13 account, and no knowledge of actually what was
14 going on. We were only informed of the
15 final figures.

16 Q. I found the cheque I was
17 searching for. I show you a cheque drawn on
18 the Royal Bank of Canada, dated 17 February,
19 1961, payable to Commodore Portable Typewriter
20 Limited, in the amount of \$24,992.50, signed
21 by Netherlands Overseas Corporation Canada
22 Limited, with two signatures, one being Shemelt.
23 I cannot make out the other signature; and
24 endorsed on the back "For deposit only for
25 credit of Commodore Portable Typewriter Company
26 Limited." Is that the cheque to which you
27 have referred?

28 A. This is the cheque. I have
29 never seen the cheque. The reason Mr. Draper
30

M. Kapp

11939

1 knows of its existence he was shown this
2
3 cheque last week by ---

4 Q. Mr. Wolfman?

5 A. Somebody from the Commission.
6 I know it went into the collateral account
7 because this particular stamp, the endorsement
8 is the stamp that Commodore Sales had. The
9 stamp Commodore Portable Typewriter uses is
10 completely different. I would be glad to
11 show you the stamp.

12 MR. SHEPHERD: I offer this cheque
13 in evidence, Mr. Commissioner.

14 THE COMMISSIONER: 3640.

15 ---EXHIBIT
16 ---EXHIBIT NO. 3640: Cheque dated February
17 17, 1961, drawn on the
18 Royal Bank of Canada,
19 payable to Commodore
20 Portable Typewriter
21 Limited, in the amount
22 of \$24,992.50, drawn by
23 Netherlands Overseas
24 Corporation.

25 A. Do you want the stamp or a
26 sample?

27 MR. SHEPHERD: Q. I think just a sample.

28 Now, do you now produce a slip of
29 paper you wish to put into evidence, on which
30 is stamped the words "Commodore Portable
Typewriter Company Limited"? Do you assert
that is the stamp that was used that time by
that company, and that it is different from the

M. Kapp

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stamp which is on the cheque?

A. Yes, sir, the stamp used at Commodore Portable Typewriter and Commodore Portable was a two-line stamp, whereas the stamp used at Commodore Sales on behalf of Commodore Portable was a one-line stamp.

MR. SHEPHERD: Mr. Commissioner, Mr. Kapp seeks to have entered into evidence a stamp of that company, which is quite evidently not the same in its appearance as is the stamp on this cheque, Exhibit 3640.

THE COMMISSIONER: That will be 3641.

---EXHIBIT NO. 3641: Impression of stamp of Commodore Portable Typewriter Company Limited.

MR. SHEPHERD: Q. Who prepared journal entries in the books of Commodore Portable Typewriters relating to this transaction?

MR. POMERANT: Excuse me, Mr. Commissioner. Mr. Kapp has the original stamp here itself, and he wonders if you want that entered as well?

THE COMMISSIONER: No, I don't think so. We have had a variety of things entered into evidence, but I think the impression that is produced can be taken as sufficient.

MR. SHEPHERD: Q. Who prepared the journal entries recorded in the books of

M. Kapp

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Commodore Portable Typewriter, Mr. Kapp?

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A. The entries at that time were made by Mrs. Porkoph - P-o-r-k-o-p-h, who was the bookkeeper for Commodore Portable Typewriter.

Q. But from whom did she get the instructions concerning the appropriate journal entry to make on this very transaction, from Mr. Wagman?

A. No, the instructions to Mrs. Porkoph was taken from me.

Q. And from whom did you get your understanding which led to the journal entries, since it seems plain from the journal entry, it wasn't your journal entry you received a cheque from Netherlands Overseas, you think you had received directly a credit from Commodore Sales Acceptance?

A. I was given the understanding by Mr. Wagman that they had received the money, and as I said to you just now, and verified in the books of Commodore Sales, they did receive the money and credited Commodore Portable Typewriter. Mr. Wagman told me, and I have accepted it and made the entries accordingly. By that time I knew Mr. Wagman quite while, having worked with him in the borrowing of money.

M. Kapp

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Q. I think you have said,
relating now to the shares, that you were
aware that Mr. Morgan was the purchaser of
the shares, but you were not aware that
Netherland Overseas had anything to do with
the share transfer; is that correct?

A. That is correct, this is the way
it was given to me. And as I have said, I
have reflected the entries accordingly that
Netherlands Overseas bought the notes and
Mr. Morgan bought the shares.

Q. Did it trouble you at all that
Mr. Morgan was buying the shares from Mrs.
Tramiel and Mrs. Kapp, but the method of
payment was a reduction in the loan owing to
Commodore Sales Acceptance by Commodore
Portable Typewriters?

A. No, it didn't bother me, sir.
My understanding was this was going to Atlantic,
and I think it would only be natural for them
if they had money going to Commodore Portable
Typewriter to use that money for reduction of
the debt, which is something we would want to
do ourselves.

Q. But I suggest Commodore Portable
Typewriters did not own the shares. Would you
not agree the more usual way for this
transaction to occur would be for Mr. Morgan to

M. Kapp

11943

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2 give Mrs. Tramiel and Mrs. Kapp a cheque for
3 the purchase price of the shares?

4 A. Well, again, no, Mr. Shepherd,
5 because we would still want the major
6 controlling shares of Commodore Portable
7 Typewriter. We had guaranteed the accounts,
8 guaranteed the loans from Commodore Sales
9 Acceptance. So, therefore, again, it would be --
10 it would not be unusual at all in that case
11 for Mr. Morgan to pay the Commodore Sales
12 rather than to us.

13 Q. Did Mr. Morgan know that Mrs.
14 Tramiel and Mrs. Kapp were the owners of the
15 shares?

16 A. Must have been known, because
17 these instructions we have given that the
18 shares go in these names.

19 Q. So, obviously you had to make
20 some journal entries to reflect what you
21 then understood the position to be, that
22 Mrs. Tramiel and Mrs. Kapp had paid a debt of
23 Commodore Portable Typewriters to Commodore
24 Sales Acceptance, and were, therefore, entitled
25 to receive credit for that payment from
26 Commodore Portable Typewriters; is that
27 correct?

28 A. Yes, and they did receive credit
29 by Commodore Portable Typewriters.

M. Kapp

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Q. And they then settled that debt owing to them by Commodore Portable Typewriters by the issuance of preference shares; is that not correct?

A. That is correct.

Q. Was this done on your own motion or was this a method of treating the matter suggested to you by Mr. Wagman or Mr. Morgan?

A. No, it had been suggested by Mr. Morgan in order to eliminate the debt in the form of repayment we should issue preference shares for the \$25,000.

Q. Were you aware from any source that other holders of Commodore Sales Acceptance shares received offers to exchange them for shares of Atlantic Acceptance Corporation on the basis which would result in the payment of \$7.50 per share?

A. No. I have no knowledge of what was going on at Commodore Sales Acceptance with the exception of my relationship with Mr. Wagman in connection with the factoring business when Commodore Portable was borrowing. I don't know what was going on in there.

Q. Had it been your understanding you would receive \$6.00 per share for the shares you were selling?

M. Kapp

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2 A. I believe there was some sort
3 of figure mentioned at the time.

4 Q. Now, I put it to you -- you
5 are very welcome to look at the documents if
6 you wish -- that the history of this share
7 block was this: Mrs. Tramiel and Mrs. Kapp
8 acquired a 25 per cent interest, being
9 1,000 shares. Thereafter other shareholders
10 subscribed for shares in Commodore Sales
11 Acceptance. And you were given by Commodore
12 Sales Acceptance 250 shares in settlement of
13 services which you performed for Commodore
14 Sales Acceptance. You then subscribed, as
15 every shareholder was entitled to do, to
16 three shares for every one you held at a price
17 of 10 cents per share, so that you had 1,000
18 common shares. Mrs. Tramiel and Mrs. Kapp,
19 having originally subscribed for 1,000 shares
20 subscribed for a further 3,000 at 10 cents
21 per share, pursuant to the same arrangement,
22 so that Mrs. Tramiel and Mrs. Kapp had
23 4,000 shares, and you had 1,000 shares.

24 Did you understand you were selling
25 to Mr. Morgan the 4,000 shares which Mrs.
26 Tramiel and Mrs. Kapp owned, or did you understand
27 you were selling a block of 5,000 shares, which
28 would include the thousand you had acquired?

29 A. I didn't know exactly how many
30

M. Kapp

11946

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2 shares we had. My understanding was that
3 the \$25,000 was for all the shares that
4 we jointly owned, that is Mrs. Tramiel, Mrs.
5 Kapp, Mr. Tramiel and myself.

6 Q. What discussion took place as
7 a result of which there was issued to you
8 250 Commodore Sales Acceptance shares, and you
9 then subscribed for three times that many
10 10 cents? ~~for a further 750 shares~~

11 A. Well, of course, frankly I don't
12 remember anything about it. The only thing
13 I know is what I heard you describe today,
14 and before about the thousand shares.

15 Q. When did you first learn that
16 you owned a thousand shares, albiet the
17 certificates stood in the names of Annett?

18 A. Somehow my whole recollection
19 of the transaction is very vague, with the
20 exception I do recollect that we had shares,
21 and subsequently they were sold for \$25,000.
22 This is the part I do remember. And what the
23 amount of the shares were exactly, I don't know.

24 Q. What I would like to get at,
25 Mr. Kapp, is whether you even knew at all that
26 the company, Commodore Sales Acceptance,
27 authorized to be issued to you 250 shares in
28 recognition of services you had performed for
29 that company?

M. Kapp

11947

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2 A. If I ever knew it I certainly
3 don't remember it now.

4 Q. I show you from Exhibit 60,
5 being the minute book of Commodore Sales
6 Acceptance, minutes of the 23rd of December,
7 1959, stating that 250 shares are allotted
8 to you for public relations service. And I
9 direct your attention in the same exhibit, a
10 subscription for a further 750 shares at 10
11 cents each on the same date, signed by yourself.
12 Does this bring back to your memory the
13 allotment of these shares for public relations
14 services and the subscription for a further
15 750 at 10 cents each?

16 A. Somehow it doesn't bring any
17 recollection. I have given this matter some
18 thought since you brought it up before, and
19 somehow this detail just didn't stay in my mind,
20 with the exception of the \$25,000 made in that
21 transaction.

22 Q. What I am wondering about, Mr.
23 Kapp, do you consider that you ever did know
24 that you had a thousand shares in that company,
25 250 for public relations services and 750
26 for a 10 cents subscription?

27 A. My understanding was originally
28 we had 25 per cent ---

29 Q. Yes?

M. Kapp

11948

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by us. A. of the shares issued to us.

I know afterwards some more money went into
Commodore Sales Acceptance, which we had
nothing to do, and the share ownership
somehow changed. But the exact amount of
shares I never paid much attention to
afterwards. I did not perform any.

Q. Perhaps we can get at this way,
at the time of the sale to Mr. Morgan did
you consider Mrs. Tramiel and Mrs. Kapp owned
all the shares which your respective families
had, or did you realize you had some as well?

A. I didn't realize. My understanding
was those were the only two shareholders, and
those were all the shares that we owned.

Q. Can you assist us as to why you
would sign that subscription for additional
shares and not be able to recall it to mind
that the transaction occurred? I can understand
you might not just know in the minutes of
Commodore Sales they were allotting shares
allegedly to you?

A. When we go back to 1959, Mr.
Shepherd, I didn't have the understanding of
minute books that I may have today, and I
didn't particularly go into it as to what these
shares were. I took it for granted all the
time this was part of the original shares owned

M. Kapp

11949

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2 by us. we had forms. And
3 had to Q. Did you in fact, so far as
4 you were aware, perform any public relations
5 services for Commodore Sales Acceptance
6 prior to that date in 1959 which would call
7 for compensation in this manner?

8 original A. I did not perform any public
9 relations service. The only service I know
10 I have performed for Commodore Sales is in
11 the earlier day to help Mr. Wagman set up
12 certain forms, trust receipt, and the type
13 used --the assigning form used by Commodore
14 Sales were made up by myself. And this was
15 based on what I had learned in dealing
16 with Interprovincial.

17 Q. Yes?

18 instr A. And this is the only service I
19 know I may have performed for Commodore Sales.

20 shern Q. Would it be fair to say, at
21 least in your own mind, you would be performing
22 that particular work as much for the benefit
23 of Commodore Portable Typewriters, that was
24 borrowing on this form, as for Commodore Sales?

25 A. In my mind when Commodore Sales
26 started there was nothing, so subsequently
27 if we had to assign receivables, make receipts
28 to Commodore Sales, and make assignment of
29 inventories, it wasn't possible to make it
30

M. Kapp

11950

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2 unless we had forms. And, therefore, we
3 had to make them up, and I helped Mr. Wagman.
4 That basically was for my benefit.

5 Q. Did you then consider that
6 in return for \$25,000, Mr. Morgan was buying
7 whatever shares had arisen out of the
8 original subscription for stock made when
9 Commodore Sales Acceptance was first organized
10 and Commodore Portable Typewriters loaned money
11 to that company?

12 A. That is right.

13 Q. Did you give any instructions
14 to Annett's to deliver a certificate for a
15 thousand shares to which you were entitled to
16 Netherlands Overseas or, indeed, to anybody?

17 A. I don't recall giving any
18 instructions to anybody, not only for a
19 thousand shares, but for that matter for any
20 shares.

21 Q. And I suppose you are able to say
22 whether Mrs. Tramiel and Mrs. Kapp gave any
23 instructions to Annett's to the effect their
24 shares should be delivered to some other
25 person?

26 A. I don't think so they did.

27 THE COMMISSIONER: We will now rise until
28 ten a.m. on Thursday.

29 I have had some discussion with
30

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M. Kapp

11951

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2 Mr. Pomerant, Mr. Kapp, about the time that
3 would be convenient to him, and we propose
4 to resume this examination on Thursday after
5 hearing two witnesses first who have been --
6 at least, one witness first whose appearance
7 has been settled for at that time.

8 So, I think it is all clearly understood
9 by Mr. Pomerant.

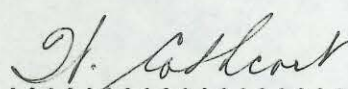
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11 ---Whereupon the Hearing adjourned at 5:03 p.m.
12 to commence at 10:00 o'clock in the
13 forenoon on Thursday, December 8, 1966.
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1 Certified correct as to pages 11791-11804,
2 11841-11864, and 11905-11920.

3 

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5 Chartered Shorthand Reporter

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7
8 Certified correct as to pages 11805-11820-A,
9 11865-11878, and 11925-11951.

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13 Chartered Shorthand Reporter

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15 Certified correct as to pages 11821-11850-A
16 and 11879- 11904-C.

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20 Chartered Shorthand Reporter

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